

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688
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ADMINISTRATION, WORKFORCE & LEGISLATION

April 18, 2017

1:00 p.m.

COMMITTEE MEMBERS: Directors McPartland (Chairperson), Dufty (Vice Chairperson), Keller, and Simon

A regular meeting of the Administration, Workforce, and Legislation Committee will be held at 1:00 p.m. on Tuesday, April 18, 2017, in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 - 20th Street, Oakland, California.

Members of the public may address the committee regarding any matter on this agenda. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the committee. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under Public Comment.

AGENDA

1. Call to Order.
 - a. Roll Call.
2. State and Federal Legislative Update.* For information.
3. Proposed Modification to Small Business Program.* For information.
4. Employee Recruitment and Relocation for Assistant General Manager, Planning, Development, and Construction.* For information.
5. Public Comment.
6. New Business. (An opportunity for Board Members to introduce potential matters for a future committee agenda.)

Kenneth A. Duron
District Secretary

Please refrain from wearing scented products (perfume, cologne, after-shave, etc.) to this meeting, as there may be people in attendance susceptible to environmental illnesses.

BART provides service/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address BART Board matters. A request must be made within one and five days in advance of Board meetings, depending on the service requested. Please contact the Office of the District Secretary at (510) 464-6083 for information.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Administration, Workforce and Legislation Committee
DATE: April 14, 2017

FROM: General Manager

SUBJECT: State and Federal Legislation

At the April 18 Administration, Workforce and Legislation Committee meeting, staff will present state and federal legislation for discussion.

Attached are bill analyses and recommendations for ten state bills and one federal bill that staff will present. The legislation has a nexus to BART and aligns with the 2017 State and Federal Program Goals adopted by the Board of Directors in December 2016.

SUPPORT (8)

ACA 4 (Aguiar- Curry)	Local Government Financing: Affordable Housing and Public Infrastructure
AB 179 (Cervantes)	California Transportation Commission
AB 1089 (Mullin)	Local Elective of Offices: Contribution Limitations
AB 1113 (Bloom)	State Transit Assistance Program
AB 1640 (E. Garcia)	Priority Funding for Transportation in Low-Income Communities
SB 150 (Allen)	Regional Transportation Plans
SB 166 (Skinner)	Residential Density and Affordability
H.R. 1664 (DeFazio)	Investing in America: A Penny for Progress Act

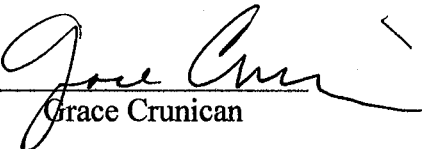
OPPOSE (1)

AB 1509 (Baker)	BART, Redirecting Existing Funds
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WATCH (2)

AB 758 (Eggman)	Tri-Valley San Joaquin Valley Regional Rail Authority
SB 614 (Hertzberg)	Public Transportation Agencies: Administrative Penalties

If you have any questions, please contact Rodd Lee, Department Manager, Government and Community Relations at 510-464-6235.


Grace Crunican

Attachment

cc: Board of Directors
Deputy General Manager
Board Appointed Officers
Executive Staff



BART Bill Analysis and Recommendation

State: ACA 4

Author: Aguiar-Curry (D – Winters)

Co-author(s): Chiu (D – San Francisco), Eggman (D – Stockton), Garcia (D – Coachella), Gloria (D – San Diego), Limon (D – Goleta), McCarty (D – Sacramento), Mullin (D – South San Francisco), Rubio (D – Baldwin Park), Santiago (D – Los Angeles), Ting (D – San Francisco)

Title: Local Government Financing: Affordable Housing and Public Infrastructure: Voter Approval

Sponsor: Author

Background:

As of the November 2016 General Election, 24 counties throughout California have been successful in passing special taxes for local transportation projects and programs. These counties, referred to as “self-help,” counties have provided reliable and stable funding for local transportation needs and proven to be a tremendous benefit to the overall state transportation system.

However, the current two-thirds voter approval threshold makes it difficult for local governments to impose taxes for specific purposes like transportation. As a result, many counties are deprived of much-needed funding for transportation infrastructure, maintenance, and operations.

Purpose:

ACA 4 would lower the voter-threshold for the imposition, extension, or increase of a special tax by a local government to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure or affordable housing projects, from two-thirds to 55%.

Within ACA 4, “improvements to transit, streets, and highways” is included within the scope of public infrastructure projects. The bill defines affordable housing as housing developments, or portions of housing developments, that provide workforce housing affordable to households earning up to 150 percent of countywide median income, and housing developments, or portions of housing developments, that provide housing affordable to lower, low-, or very low income households, as those terms are defined in state law.

BART Impact:

ACA 4 would assist Bay Area cities, counties, and special districts in generating local resources to fund public infrastructure or affordable housing projects.

Known Support/Opposition:

Support and Opposition: Unknown at this time.

Other Comments:

The Board voted to support SCA 6 (Wiener), which proposes to lower the voter-threshold on a special tax for transportation projects from two-third to 55%.

Status:

Introduced on 2/17/17 and awaiting referral.

Recommendation:

Support

Watch

Oppose

Analysis completed on 4/12/17

Assembly Constitutional Amendment

No. 4

**Introduced by Assembly Member Aguiar-Curry
(Coauthors: Assembly Members Chiu, Eggman, Eduardo Garcia,
Gloria, Limón, McCarty, Mullin, Rubio, Santiago, and Ting)**

February 17, 2017

Assembly Constitutional Amendment No. 4—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 1 and 4 of Article XIII A thereof, by amending Section 2 of, and by adding Section 2.5 to, Article XIII C thereof, by amending Section 3 of Article XIII D thereof, and by amending Section 18 of Article XVI thereof, relating to local finance.

LEGISLATIVE COUNSEL'S DIGEST

ACA 4, as introduced, Aguiar-Curry. Local government financing: affordable housing and public infrastructure: voter approval.

(1) The California Constitution prohibits the ad valorem tax rate on real property from exceeding 1% of the full cash value of the property, subject to certain exceptions.

This measure would create an additional exception to the 1% limit that would authorize a city, county, or city and county to levy an ad valorem tax to service bonded indebtedness incurred to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure or affordable housing, if the proposition proposing that tax is approved by 55% of the voters of the city, county, or city and county, as applicable, and the proposition includes specified accountability requirements.

(2) The California Constitution conditions the imposition of a special tax by a local government upon the approval of $\frac{2}{3}$ of the voters of the

local government voting on that tax, and prohibits these entities from imposing an ad valorem tax on real property or a transactions or sales tax on the sale of real property.

This measure would authorize a local government to impose, extend, or increase a special tax for the purposes of funding the construction, rehabilitation or replacement of public infrastructure or affordable housing, if the proposition proposing that tax is approved by 55% of its voters voting on the proposition and the proposition includes specified accountability requirements. This measure would also make conforming changes to related provisions.

(3) The California Constitution prohibits specified local government agencies from incurring any indebtedness exceeding in any year the income and revenue provided in that year, without the assent of $\frac{2}{3}$ of the voters and subject to other conditions. In the case of a school district, community college district, or county office of education, the California Constitution permits a proposition for the incurrence of indebtedness in the form of general obligation bonds for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, to be adopted upon the approval of 55% of the voters of the district or county, as appropriate, voting on the proposition at an election.

This measure would similarly lower to 55% the voter-approval threshold for a city, county, or city and county to incur bonded indebtedness, exceeding in any year the income and revenue provided in that year, that is in the form of general obligation bonds issued to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure or affordable housing projects, if the proposition proposing that bond includes specified accountability requirements.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

- 1 *Resolved by the Assembly, the Senate concurring,* That the
- 2 Legislature of the State of California at its 2017–18 Regular
- 3 Session commencing on the fifth day of December 2016, two-thirds
- 4 of the membership of each house concurring, hereby proposes to
- 5 the people of the State of California, that the Constitution of the
- 6 State be amended as follows:
- 7 First—That Section 1 of Article XIII A thereof is amended to
- 8 read:



BART Bill Analysis and Recommendation

State: AB 179

Author: Cervantes (D-Corona)

Title: California Transportation Commission

Sponsor: ClimatePlan, TransForm

Background:

The California Transportation Commission (CTC) consists of 13 commissioners. There are 11 voting commissioners, of which 9 are appointed by the Governor subject to Senate confirmation; one appointed by the Senate Committee on Rules; and one appointed by the Speaker of the Assembly. The two remaining non-voting ex officio commissioners are Members of the Legislature, usually the Chairs of the respective transportation committees.

Purpose:

AB 179 would restructure the CTC to require that seven of its 11 voting commissioners have expertise in sustainable transportation, public health, climate, and/or environmental justice. The bill would require additional coordination with the California Air Resources Board and create an Environmental Justice Advisory Committee to the CTC.

BART Impact:

To the extent that specific expertise on the CTC may contribute to project selection and prioritizations that emphasize sustainability and positive public health outcomes, as well as equitable delivery of transit services, the bill may be consistent with BART's Strategic Plan Framework related to advancing regional sustainability and public health outcomes in the region.

Known Support/Opposition:

Support: California Bicycle Coalition, California Pan-Ethnic Health Network, Center for Community Action and Environmental Justice, ClimatePlan, Move LA, PolicyLink, Public Advocates, Student Senate for California Community Colleges, TransForm

Oppose: Unkown at the this.

Other Comments:

Status:

Referred to Assembly Transportation Committee. No hearing date set.

Recommendation:

Support

Watch

Oppose

Analysis completed on 4/12/17

AMENDED IN ASSEMBLY FEBRUARY 14, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 179

Introduced by Assembly Member Cervantes

January 18, 2017

An act to amend Section 14502 of, and to add Sections 14506.7 and 14516 to, the Government Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 179, as amended, Cervantes. California Transportation Commission.

Existing law creates the California Transportation Commission, with various powers and duties relative to the programming of transportation capital projects and allocation of funds to those projects pursuant to the state transportation improvement program and various other transportation funding programs.

Existing law provides that the commission consists of 13 members: 11 voting members, of which 9 are appointed by the Governor subject to Senate confirmation, one is appointed by the Senate Committee on Rules, and one is appointed by the Speaker of the Assembly, and 2 Members of the Legislature who are appointed as nonvoting ex officio members.

This bill would require that 6 7 of those voting members have specified qualifications.

This bill would require the commission to create an Environmental Justice Advisory Committee, comprised of at least 5 members, to advise the commission in its allocation and programming of transportation moneys and any other pertinent transportation policy matters. The bill would require that the members of the committee represent communities

disproportionately burdened by, and vulnerable to, high levels of pollution and other environmental justice issues, and would require that the commission appoint only individuals nominated by environmental justice organizations and community groups to that committee.

This bill would require the commission and the State Air Resources Board to hold at least 2 joint meetings per calendar year to coordinate their implementation of transportation policies.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14502 of the Government Code is
2 amended to read:

3 14502. The commission consists of 13 members appointed as
4 follows:

5 (a) (1) Nine members shall be appointed by the Governor with
6 the advice and consent of the Senate. One member shall be
7 appointed by the Speaker of the Assembly and one member shall
8 be appointed by the Senate Committee on Rules, with neither of
9 these members subject to confirmation by the Senate. A member
10 appointed pursuant to this subdivision shall not simultaneously
11 hold an elected public office, or serve on any local or regional
12 public board or commission with business before the commission.

13 (2) Of the members appointed pursuant to this subdivision, ~~six~~
14 *seven* members shall have the following qualifications:

15 (A) Two members shall have worked directly with those
16 communities in the state that are most significantly burdened by,
17 and vulnerable to, high levels of pollution, including, but not
18 limited to, those communities with racially and ethnically diverse
19 populations or with low-income populations.

20 (B) One member shall have training and experience in
21 sustainable transportation that includes addressing bicycle and
22 pedestrian safety issues in transportation.

23 (C) One member shall have training and experience in
24 sustainable transportation that includes addressing transit issues.

25 (D) One member shall have training and experience in, or be
26 an authority on, the public health effects of ~~transportation,~~
27 ~~including the health effects of air pollution.~~ *transportation.*



BART Bill Analysis and Recommendation

State: AB 1089

Author: Mullin (D-San Mateo)

Co-author(s): Assemblymembers Berman (D-Los Altos) and Chiu (D-San Francisco); Senators Allen (D-Santa Monica), Hill (D-San Mateo), and Wieckowski (D-Fremont)

Title: Local elective of offices: contribution limitations.

Sponsor: Author

Background:

Existing law permits a county or city to limit campaign contributions in its local elections. A special district, school district, or community college district is also permitted to limit campaign contributions in elections to district offices. However, many cities, counties, and special districts do not have established campaign contribution limits. Only 22% of cities and 30% of counties have established contribution limits. In the past few election cycles, there have been numerous examples of candidates running for local office receiving \$20,000, \$50,000, or even \$90,000 contributions. In some cases, more than 50% of a candidate's campaign funds may come from just one or two contributors.

Existing law also establishes certain campaign contribution limits for the Senate and Assembly (\$4,400 per contributor, per election). The Fair Political Practices Commission is responsible for ensuring compliance with statewide campaign contribution limits and investigates potential violations of those limits.

Purpose:

AB 1089 requires the state campaign contribution limits for candidates for Senate and Assembly to also apply to local office, if the city, county, or special district has not adopted their own contribution limits. This cap is meant to prevent excessive contributions in jurisdictions with no limits, while encouraging local jurisdictions to enact their own contribution limits tailored to their communities.

Because AB 1089 proposes to amend the Political Reform Act without being submitted to voters for their approval, it requires a two-thirds vote of each house of the legislature for passage.

BART Impact:

Contribution limits would apply to candidates for BART Board of Director, unless the Board chooses to set its own limits for campaign contributions.

Known Support/Opposition:

Support: California Church IMPACT, California Clean Money Campaign, California Common Cause, California League of Conservation Voters, Campaign Legal Center, Friends of the Earth, League of Women Voters of California, MOVI, Money Out Voters In, Represent Us, Take Back Our Republic.

Oppose: None at this time

Other Comments:

This bill is substantially similar to the final version of AB 2523 (Mullin) of 2016, which BART supported. AB 2523 failed passage on the Senate Floor on a 25-14 vote.

Status:

Passed Assembly Elections and Redistricting Committee on 3/21/17 (Y:6, N:1, A:0).
Referred to Assembly Appropriations, placed on suspense file 4/5/17.

Recommendation:

Support

Watch

Oppose

Analysis completed on 4/12/17

ASSEMBLY BILL

No. 1089

**Introduced by Assembly Member Mullin
(Coauthors: Assembly Members Berman and Chiu)
(Coauthors: Senators Allen, Hill, and Wieckowski)**

February 17, 2017

An act to amend and repeal Sections 35177 and 72029 of the Education Code, to amend and repeal Sections 10003, 10202, and 10544 of the Elections Code, and to amend Section 85301 of, to amend, repeal, and add Sections 85305, 85306, 85307, 85315, 85316, 85317, and 85318 of, and to add Section 85702.5 to, the Government Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 1089, as introduced, Mullin. Local elective offices: contribution limitations.

The Political Reform Act of 1974 prohibits a person, other than a small contributor committee or political party committee, from making to a candidate for elective state office, for statewide elective office, or for office of the Governor, and prohibits those candidates from accepting from a person, a contribution totaling more than a specified amount per election. For a candidate for elective state office other than a candidate for statewide elective office, the limitation on contributions is \$3,000 per election, as that amount is adjusted by the Fair Political Practices Commission in January of every odd-numbered year.

Existing law authorizes a county, city, or district to limit campaign contributions in local elections. Existing law authorizes the governing board of a school district or of a community college district to limit campaign expenditures or contributions in elections to district offices.

The act specifies that it does not prevent the Legislature or any other state or local agency from imposing additional requirements on a person if the requirements do not prevent the person from complying with the act, and that the act does not nullify contribution limitations or prohibitions by any local jurisdiction that apply to elections for local elective office, as specified.

This bill, commencing January 1, 2019, instead would prohibit a person from making to a candidate for local elective office, and would prohibit a candidate for local elective office from accepting from a person, a contribution totaling more than the amount set forth in the act for limitations on contributions to a candidate for elective state office. This bill would also authorize a county, city, special district, or school district to impose a limitation that is different from the limitation imposed by this bill. This bill would repeal the authorization for the governing board of a school district or of a community college district to limit campaign expenditures in elections to district offices. This bill would make specified provisions of the act relating to contribution limitations applicable to a candidate for a local elective office, except as specified.

The act makes a violation of its provisions punishable as a misdemeanor and subject to specified penalties.

This bill would add the contribution limitation imposed by the bill to the act's provisions, thereby making a violation of the limitation punishable as a misdemeanor and subject to specified penalties. However, the bill would specify that a violation of a limitation imposed by a local government is not subject to the act's enforcement provisions. The bill would authorize a local government that imposes a limitation that is different from the limitation imposed by this bill to adopt enforcement standards for a violation of the limitation imposed by the local government agency, including administrative, civil, or criminal penalties. By expanding the scope of an existing crime with regard to a violation of a contribution limitation imposed by the bill, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes

upon a $\frac{2}{3}$ vote of each house of the Legislature and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Most states impose limitations on contributions to candidates
4 for local elective offices. California is among the minority of states
5 without these contribution limitations.

6 (b) Most local governments in this state have not independently
7 imposed limitations on contributions to candidates for local elective
8 offices.

9 (c) In local jurisdictions in this state that have not imposed
10 limitations on contributions, candidates for local elective offices
11 often receive contributions that would exceed the limitations for
12 a state Senate campaign, even though most local jurisdictions
13 contain far fewer people than the average state Senate district.

14 (d) In local jurisdictions in this state that have not imposed
15 limitations on contributions, candidates for local elective office
16 sometimes raise 40 percent or more of their total campaign funds
17 from a single contributor.

18 (e) A system allowing unlimited contributions to a candidate
19 for local elective office creates the risk and the perception that
20 local elected officials are beholden to their contributors and will
21 act in the best interest of those contributors at the expense of the
22 people.

23 (f) This state has a statewide interest in preventing actual
24 corruption and the appearance of corruption at all levels of
25 government.

26 (g) This act establishes a limitation on contributions to a
27 candidate for local elective office in a jurisdiction in which the
28 local government has not established a limitation. However, a local
29 government may establish a different limitation that is more
30 precisely tailored to the needs of its communities.

31 SEC. 2. Section 35177 of the Education Code is amended to
32 read:



BART Bill Analysis and Recommendation

State: AB 1113

Author: Bloom (D – Santa Monica)

Title: State Transit Assistance Program

Sponsor: California Transit Association

Background:

The State Transit Assistance Program (STA) provides vital funding for public transportation operators. The program allocates funds to regional transportation planning agencies, which then further sub-allocate those funds to individual transit operators.

For most of the program's history, funds have been allocated by a long-standing formula:

- 50% of the funds are allocated to regions based on population (the ratio of the region's population to the state's population)
- 50% of the funds are allocated based on locally-generated revenue (the ratio of the locally-generated revenue of each operator in the region to the locally-generated revenue of all operators in the state)

This formula encouraged transportation agencies to generate their own funds while also ensuring that funds were allocated based on regional population and need.

In 2016, the State Controller's Office implemented new calculation and allocation methodologies, inadvertently altering the way these funds had been allocated for over 40 years. This modification of the longstanding allocation formula was due to ambiguity in the statutes governing the program, particularly with respect to which entities were considered public transit operators.

As a result, all public agencies and some private, non-profit organizations who have reported financial data to the Controller in the previous year, including those who are not true operators of public transit, are now eligible to directly receive STA program funds. This reduced the available funding for true operators of public transit services. The 2016-17 Budget Act included a temporary fix for the program by requiring the State Controller to use the long-understood methodology through the 2018 fiscal year, until a long-term fix for the program could be developed.

Purpose:

AB 1113 amends the statutes governing the STA program to clarify several ambiguities and restore operation of the program to how it was intended to run.

Specifically, the bill:

- Clarifies to which local entities transportation planning agencies may directly allocate STA program funds by more clearly-defining "STA-eligible transit operator"
- Clarifies that only local revenue may be used to calculate revenue shares for STA eligible transit operators
- Updates administrative policies and procedures to reflect current data

BART Impact:

BART receives STA funding through an allocation from the Metropolitan Transportation Commission (MTC). For the past year, MTC, BART and other STA recipients have been working with the California Transit Association's STA task force on the drafting of AB 1113 (Bloom) to clarify several ambiguities that led to the State Controller's administrative changes.

MTC's February 2017, FY18 Fund Estimate has BART's share of FY18 STA at \$17.5M, with \$6.9M of it directed to feeder bus operators, leaving a net of \$10.6M for the FY18 Preliminary Budget. Based on the estimates of STA funding in SB 1 (Beall/Frazier), BART could see an increase in STA funds. This increase is currently estimated at \$14M annually, starting with a partial year in FY18.

Known Support/Opposition:

Support: California Transit Association (Sponsor)

Oppose: Unknown at this time

Other Comments:

Status:

Hearing on 4/17/17 in Assembly Transportation Committee.

Recommendation:

Support

Watch

Oppose

Analysis completed on 4/12/17

AMENDED IN ASSEMBLY MARCH 28, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1113

Introduced by Assembly Member Bloom

February 17, 2017

An act to amend Sections 99243, 99312, 99312.1, 99312.7, 99313, 99313.1, 99313.3, 99313.6, 99313.7, 99314, 99314.1, 99314.2, 99314.3, 99314.4, 99314.5, and 99314.6 of, and to repeal and add Section 99312.2 of, the Public Utilities Code, relating to public transit.

LEGISLATIVE COUNSEL'S DIGEST

AB 1113, as amended, Bloom. State Transit Assistance program.

Existing law requires the transfer of a specified portion of the sales tax on diesel fuel, in addition to various other revenues, to the Public Transportation Account, a trust fund in the State Transportation Fund. Existing law requires funds in the account to be allocated to various public transportation and transportation planning purposes, with specified revenues in the account to be allocated by the Controller to specified local transportation agencies for public transportation purposes, pursuant to the State Transit Assistance (STA) program. Existing law requires STA funds to be allocated by formulas based 50% on population and 50% on transit operator revenues.

This bill would revise and recast the provisions governing the STA program. The bill would provide that only STA-eligible operators, as defined, are eligible to receive an allocation from the portion of program funds based on transit operator revenues. The bill would provide for each STA-eligible operator within the jurisdiction of the allocating local transportation agency to receive a proportional share of the revenue-based program funds based on the qualifying revenues of that

operator, as defined. The bill would revise the duties of the Controller and the Department of Transportation in administering the program. The bill would make various other conforming changes and would delete obsolete provisions.

Existing law requires the Controller, relative to local transportation funds available for public transportation and other purposes in each county, to design and adopt a uniform system of accounts and records under which operators, as defined, prepare and submit annual reports of their operation. Existing law generally requires the annual report to be submitted within 90 days of the end of the fiscal year.

This bill would instead require the report to be submitted within 7 months after the end of the fiscal year, and to contain underlying data from audited financial statements, as specified. The bill would also require certain information to be reported by operators with respect to eligibility for funding under the State Transit Assistance program as STA-eligible operators.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 99243 of the Public Utilities Code is
2 amended to read:
3 99243. (a) The Controller, in cooperation with the department
4 and the operators, shall design and adopt a uniform system of
5 accounts and records, from which the operators shall prepare and
6 submit annual reports of their operation to ~~the transportation~~
7 ~~planning agencies agencies, county transportation commissions,~~
8 ~~or the San Diego Metropolitan Transit Development Board~~ having
9 jurisdiction over them and to the Controller within ~~90 days of seven~~
10 ~~months after the end of the fiscal year. If the report is filed in~~
11 ~~electronic format as prescribed by the Controller, the report shall~~
12 ~~be furnished within 110 days after the close of each fiscal year.~~
13 *The report shall contain underlying data from audited financial*
14 *statements prepared in accordance with generally accepted*
15 *accounting principles, if this data is available. The report shall*
16 specify (1) the amount of revenue generated from each source and
17 its application for the prior fiscal year and (2) the data necessary
18 to determine which section, with respect to Sections 99268.1,
19 99268.2, 99268.3, 99268.4, 99268.5, and 99268.9, the operator is



BART Bill Analysis and Recommendation

State: AB 1640

Author: E. Garcia (D-Coachella)

Co-author(s): Chiu (D-San Francisco) and Bloom (D-Santa Monica)

Title: Transportation funding; low-income communities

Sponsor: ClimatePlan, TransForm

Background:

Historically, low-income and disadvantaged communities have been underserved by affordable and accessible transportation options. More recently, the state has sought to address this issue by enacting legislation that sets program minimum allocation requirements to benefit individuals living in disadvantaged communities.

For example, in the state's Cap-and-Trade Program, AB 1550 (2016) requires that a minimum of 25% of proceeds be invested in projects that are located within and benefiting individuals living in disadvantaged communities; and requires an additional minimum of 5% of funds be invested in projects that benefit low-income households or communities statewide; and that an additional 5% be invested in projects that benefit low-income households or communities that are within a ½ mile of a disadvantaged community.

Purpose:

AB 1640 requires, beginning in 2020, each regional transportation improvement program (RTIP) to allocate a minimum of 25% of State Transportation Improvement Program (STIP) funds to projects that provide direct, meaningful, and assured benefits to low-income communities or to riders of transit service that connects low-income residents to critical amenities and services.

The bill also requires the Department of Transportation, in consultation with low-income communities and other state agencies, to adopt related guidelines by January 1, 2018, to define and map low-income communities that are disadvantaged with respect to transportation, to identify communities that would benefit from the allocation requirements, and to specify criteria for determining whether investments benefit low-income communities.

BART Impact:

The impact of AB 1640 to BART is dependent in part on the future development of guidelines, mapping, and criteria identified in determining "benefit," pursuant to the bill. The bill may be consistent with BART's Strategic Plan Framework in that it emphasizes equitable delivery of transit services, sustainability, and public health in its approach to transportation funding.

Known Support/Opposition:

Support: California Bicycle Coalition, California Pan-Ethnic Health Network, Center for Community Action and Environmental Justice, ClimatePlan, Move LA, PolicyLink, Public Advocates, Student Senate for California Community Colleges, TransForm

Oppose: Unknown at this time.

Other Comments:

None.

Status:

Referred to Assembly Transportation Committee. No hearing date set.

Recommendation:

Support

Watch

Oppose

Analysis completed on 4/12/17

ASSEMBLY BILL

No. 1640

**Introduced by Assembly Member Eduardo Garcia
(Coauthors: Assembly Members Bloom and Chiu)**

February 17, 2017

An act to amend Sections 14529 and 65082 of, and to add Section 65083 to, the Government Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1640, as introduced, Eduardo Garcia. Transportation funding: low-income communities.

Existing law establishes the state transportation improvement program process, pursuant to which the California Transportation Commission generally programs and allocates available state and federal funds for transportation capital improvement projects, other than state highway rehabilitation and repair projects, over a multiyear period based on estimates of funds expected to be available. Existing law provides funding for these interregional and regional transportation capital improvement projects through the state transportation improvement program process, with 25% of funds available for interregional projects selected by the Department of Transportation through preparation of an interregional transportation improvement program and 75% for regional projects selected by transportation planning agencies through preparation of a regional transportation improvement program. Existing law requires each transportation planning agency, on a biennial basis, to prepare and submit to the commission a regional transportation improvement program containing transportation capital projects identified for funding through the next cycle of the 5-year state transportation improvement program.

This bill would require, beginning January 1, 2020, each regional transportation improvement program to allocate a minimum of 25% of available funds to projects or programs that provide direct, meaningful, and assured benefits to low-income individuals who live in certain identified communities or to riders of transit service that connects low-income residents to critical amenities and services. The bill would require the department, in consultation with residents of low-income communities and specified state agencies, to adopt guidelines for this allocation no later than January 1, 2018, to define and map low-income communities that are disadvantaged with respect to transportation, to identify communities that would benefit from the allocation requirements, and to specify criteria for determining whether certain investments benefit low-income residents of the identified communities. The bill would require the department to provide financial support, upon appropriation by the Legislature, to low-income residents of low-income communities for specified purposes generally relating to enabling their participation in the development of these guidelines and the selection of transportation projects and programs.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 14529 of the Government Code is
2 amended to read:
3 14529. (a) The state transportation improvement program shall
4 include a listing of all capital improvement projects that are
5 expected to receive an allocation of state transportation funds under
6 Section 164 of the Streets and Highways Code, including revenues
7 from transportation bond acts, from the commission during the
8 following five fiscal years. It shall include, and be limited to, the
9 projects to be funded with the following:
10 (1) Interregional improvement funds.
11 (2) Regional improvement funds.
12 (b) For each project, the program shall specify the allocation or
13 expenditure amount and the allocation or expenditure year for each
14 of the following project components:
15 (1) Completion of all permits and environmental studies.
16 (2) Preparation of plans, specifications, and estimates.



BART Bill Analysis and Recommendation

State: SB 150

Author: Allen (D-Santa Monica)

Title: Regional Transportation Plans

Sponsor: ClimatePlan, TransForm

Background:

In recent years, California has passed significant legislation to address climate change. SB 32 (2016) requires the Air Resources Board (ARB) to ensure that statewide greenhouse gas (GHG) emissions are reduced to at least 40% below the 1990 level by 2030. SB 375 (2008) requires ARB to set regional targets for GHG emissions reductions from passenger vehicle use. AB 32 (2006) requires ARB to determine the 1990 statewide GHG emissions level and limit GHG emissions to that level by 2020.

Existing law also requires regional transportation planning agencies must to prepare and adopt plans with specifications that achieve a coordinated and balanced regional transportation system including, but not limited to mass transportation, highway, railroad, maritime, bicycle, goods movement, and aviation facilities and services.

Purpose:

SB 150 would require the ARB to update regional GHG emissions reductions targets to be consistent with any applicable state law or executive order. Under SB 150, the ARB would also be required to look at vehicle miles traveled (VMT) to determine if regional plans and investments are succeeding at a 15% reduction in VMT and making progress toward building sustainable and equitable communities that reduce the need to drive. Beginning March 1, 2018, and every four years thereafter, the ARB would need to prepare a report on these measures and submit it to the California Transportation Commission.

SB 150 also requires, beginning in 2022, that if a planning region is not on track to meet its 2035 targets, that region would be required to prioritize transportation projects that will reduce vehicles miles traveled and minimize burdens on low-income communities.

BART Impact:

The goals of SB 150 are very consistent with the goals of Plan Bay Area, the integrated long-range transportation, land-use and housing plan for the nine-county San Francisco Bay Area. Performance targets within Plan Bay Area 2040 include a 15% reduction per-capita CO₂ emissions from cars and light-duty trucks and increase in non-auto mode share by 10%.

Reducing GHG emissions and VMTs are also elements within BART's Transit Oriented Development (TOD) Policy and Station Access Policy. Transit-Oriented Development (TOD) on and off of BART property, put more riders within walking distance of stations and work to improve station access creates more mode choices for riders. SB 150 is also consistent with the Board's adopted goal of supporting legislation to assist in the state's GHG emission reduction.

Known Support/Opposition:

Support: Bike San Gabriel Valley, California Bicycle Coalition, California League of Conservation Voters, California Walks, Catholic Charities of the Diocese of Stockton, Center for Biological Diversity, Center for Climate Change and Public Health, Coalition for Clean Air, COAST Marin County, Bicycle Coalition, National Parks Conservation Association, Natural Resources Defense Council, Public Advocates, Safe Routes to School, National Partnership, Sierra Club California, Sunflower Alliance, The Nature Conservancy, Trust for Public Land

Oppose: None at this time

Other Comments:

Status:

Passed Senate Environmental Quality Committee 4/5/17 (Y:5, N:2, A:0)

Recommendation:

Support

Watch

Oppose

Analysis completed on 4/11/17

AMENDED IN SENATE APRIL 6, 2017

AMENDED IN SENATE MARCH 8, 2017

SENATE BILL

No. 150

Introduced by Senator Allen

January 18, 2017

An act to amend Section 65080 of the Government Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 150, as amended, Allen. Regional transportation plans.

Existing law requires certain transportation planning activities by designated regional transportation planning agencies, including development of a regional transportation plan. Certain of these agencies are designated under federal law as metropolitan planning organizations. Existing law requires metropolitan planning organizations to adopt a sustainable communities strategy or alternative planning strategy, subject to specified requirements, as part of a regional transportation plan, which is to be designed to achieve certain targets for 2020 and 2035 established by the State Air Resources Board for the reduction of greenhouse gas emissions from automobiles and light trucks in the region.

This bill would require the state board to update the greenhouse gas emission reduction targets, as specified. The bill would require the sustainable communities strategy or alternative planning strategy to include an appendix that outlines the region's transportation planning and programming activities, with transportation projects to be prioritized based on a project's ability to meet certain criteria and objectives relative to reduction in *criteria air pollutants* and vehicle miles traveled and maximization of cobenefits such as public health, social equity, and

conservation. The bill, beginning on January 1, 2018, would require the state board to monitor each metropolitan planning organization's sustainable communities strategy or alternative planning strategy, and to submit a progress report every 4 years to the California Transportation Commission, which would include an assessment of whether the metropolitan planning organization is on track to meet certain targets relating to reduction of vehicle miles traveled and reduction of greenhouse gas emissions. ~~The bill, with respect to the areas under the jurisdiction of county transportation commissions in southern California, would, beginning in 2022, require a county transportation commission to recommend for implementation only the highest priority transportation projects identified in the appendix if the area is not on track to meet the state board's 2035 greenhouse gas emission reduction targets.~~ By imposing new requirements on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65080 of the Government Code is
2 amended to read:
3 65080. (a) Each transportation planning agency designated
4 under Section 29532 or 29532.1 shall prepare and adopt a regional
5 transportation plan directed at achieving a coordinated and balanced
6 regional transportation system, including, but not limited to, mass
7 transportation, highway, railroad, maritime, bicycle, pedestrian,
8 goods movement, and aviation facilities and services. The plan
9 shall be action-oriented and pragmatic, considering both the
10 short-term and long-term future, and shall present clear, concise
11 policy guidance to local and state officials. The regional
12 transportation plan shall consider factors specified in Section 134
13 of Title 23 of the United States Code. Each transportation planning



BART Bill Analysis and Recommendation

State: SB 166

Author: Skinner (D-Oakland)

Title: Residential Density and Affordability

**Sponsor: California Rural Legal Assistance Foundation, Public Advocates
Western Center on Law and Poverty (co-sponsors)**

Background:

Existing law requires that cities and counties prepare and adopt a general plan, including a housing element, to guide future growth of a community. The housing element must identify an inventory of adequate sites for housing to meet the local jurisdiction's share of the Regional Housing Need Allocation (RHNA). This important planning obligation ensures that each local government has enough residentially zoned land to accommodate new housing construction for all income levels, including housing affordable to lower-income households.

However, existing law does not adequately ensure that after the housing element is adopted, the jurisdiction continues to maintain a supply of available land to accommodate the remaining unmet housing need throughout the eight-year period covered by most housing elements. This constrains the supply of housing and makes it more difficult for affordable housing developers to identify housing where it is needed most. It also increases pressure on neighboring cities and counties that do their share to accommodate new housing.

Purpose:

SB 166 seeks to expand the supply of housing – including affordable housing – by ensuring that localities maintain an ongoing supply of land to meet the locality's unmet housing needs. The bill requires that a local jurisdiction accommodate its remaining unmet housing need at all times throughout the planning period. At no time shall a local jurisdiction permit or cause its inventory of sites identified in the housing element to be insufficient to meet the remaining unmet share of the regional housing need for lower and moderate-income households.

If the local jurisdiction does not have enough residentially zoned sites available to accommodate unmet need, SB 166 requires the local jurisdiction to take action to designate a new site or sites.

BART Impact:

SB 166 would provide additional safeguards to insure that adequate land is available to meet local jurisdiction's low and moderate-income housing needs as required by the RHNA, potentially supporting BART's Transit Oriented Development goals related to affordable housing. This bill is also in line with the Board's adopted goal of accelerating and supporting affordable housing and TOD efforts to address the state housing crisis.

Known Support/Opposition:

Support: Sponsors

Oppose: None at this time

Other Comments:

Status:

Passed Senate Transportation and Housing Committee 3/7/17 (Y:9, N:1, A:3)

Hearing on 4/26/17 in Senate Governance and Finance Committee

Recommendation:

Support

Watch

Oppose

Analysis completed on 4/11/17

AMENDED IN SENATE MARCH 1, 2017

SENATE BILL

No. 166

Introduced by Senator Skinner

January 23, 2017

~~An act to amend and repeal Section 4055 of the Family Code, relating to child support.~~ *An act to amend Section 65863 of the Government Code, relating to land use.*

LEGISLATIVE COUNSEL'S DIGEST

SB 166, as amended, Skinner. ~~Child support guideline: low-income adjustment.~~ *Residential density and affordability.*

The Planning and Zoning Law requires a city, county, or city and county to ensure that its housing element inventory, as described, can accommodate its share of the regional housing need throughout the planning period. The law also prohibits a city, county, or city and county from reducing, requiring, or permitting the reduction of the residential density to a lower residential density that is below the density that was utilized by the Department of Housing and Community Development in determining compliance with housing element law, unless the city, county, or city and county makes written findings supported by substantial evidence that the reduction is consistent with the adopted general plan, including the housing element, and that the remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need. The city, county, or city and county may reduce the residential density for a parcel if it identifies sufficient sites, as prescribed, so that there is no net loss of residential unit capacity.

This bill, among other things, would prohibit a city, county, or city and county from permitting or causing its inventory of sites identified

in the housing element to be insufficient to meet its remaining unmet share of the regional housing need for lower and moderate-income households. The bill also would expand the definition of "lower residential density" if the local jurisdiction has not adopted a housing element for the current planning period or the adopted housing element is not in substantial compliance, as specified. This bill would also condition the approval or development containing fewer housing units at each income level than its identified capacity upon identifying sufficient sites or rezones, as prescribed, to ensure no net loss of residential unit capacity. By increasing the duties of local agencies, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law imposes a general obligation on both parents of a minor child to support their child in the manner suitable to the child's circumstances. Existing law establishes the statewide uniform guidelines for calculating court-ordered child support, based on the income of both parents and the time each parent spends with the child. Existing law establishes a rebuttable presumption that an obligor with a net disposable income, as defined, of a specified amount per month is entitled to a low-income adjustment to his or her child support obligation. The net disposable income threshold, until January 1, 2018, is \$1,500 per month, adjusted annually for cost-of-living increases. Existing law requires the Judicial Council to determine the adjustment amount based on the change in the annual California Consumer Price Index, as specified. The net disposable income threshold, commencing January 1, 2018, is \$1,000 per month without an annual adjustment for cost-of-living increases.~~

~~This bill would delete the January 1, 2018, sunset date, thereby maintaining the net disposable income threshold at \$1,500 per month, adjusted annually for cost-of-living increases, indefinitely, and would repeal the provision that becomes operative on January 1, 2018.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.



BART Bill Analysis and Recommendation

Federal: H.R. 1664

Author: Rep. Peter DeFazio (D – OR)

Co-sponsor(s): Barletta (R – PA), Capuano (D – MA), DeSaulnier (D-CA), Huffman (D – CA), Johnson (D – TX), Johnson (D – GA), Larsen (D – WA), Napolitano (D – CA), Nadler (D – NY), Nolan (D – MN), Payne (D – NJ), Sires (D – NJ), Wilson (D – FL), Cohen, (D – TN), Carson (D – IN), Lowenthal (D – CA)

Title: Investing in America: A Penny for Progress Act

Background:

According to the U.S. Department of Transportation, the nation faces an \$89.8 billion backlog in public transit state of good repair, with the need to invest a minimum of \$26.4 billion per year on maintenance and to accommodate future transit ridership growth.

Congress passed the FAST Act in December of 2015, which authorized spending for federal transit, passenger rail, and highway programs, through FY 2020. The FAST Act also provided funding through FY 2020 for public transit and highway programs in the Highway Trust Fund. While the FAST Act provided modest increases in investment, it does not fully address our need to restore the nation's aging public transit and highway systems to a state of good repair.

Purpose:

H.R. 1664 would index the gas tax to inflation capped at 1.5 cents per year. Gasoline and diesel user fees are the principal means to fund the Highway Trust Fund. However, the user fees, last adjusted in 1993, have lost more than 40 percent of their purchasing power, creating a large shortfall in the Highway Trust Fund. The legislation would provide \$500 billion to address the highways, bridges and transit infrastructure backlog over the next 15 years. The bill would authorize the US Treasury to issue 30-year Invest in America Bonds annually, through 2030. Each bond would be repaid at the end of its 30-year term, using revenues from indexing the gas and diesel tax beginning in 2017.

On an annual basis, this additional infrastructure investment represents an approximately 30% increase over current funding levels. The bill directs these additional funds to be invested proportionally among highway, transit, and safety programs authorized by the FAST Act.

In addition, this bill funds the shortfall in the Highway Trust Fund through 2030. Under current law, the Congressional Budget Office (CBO) estimates that the Highway Trust Fund will have a \$139 billion shortfall over ten years. The bill funds the Highway Trust Fund shortfall each year through FY 2030.

BART Impact:

H.R. 1664 is in line with the Board's adopted goals of 1) advocating for public transit funding within the administration's infrastructure initiative and 2) monitoring and responding to implementation of the FAST Act implementation.

BART currently receives funding from various programs authorized by the FAST Act including Urbanized Area Formula and State of Good Repair and could benefit from increases to current funding levels.

Known Support/Opposition:

Unknown at this time.

Other Comments:

Status:

Introduced 3/22/17. Referred to House Committee on Way and Means and House Committee on Transportation and Infrastructure - Subcommittee on Highways and Transit.

Recommendation:

Support

Watch

Oppose

Analysis Completed on 4/12/17

H. R. 1664

To amend the Internal Revenue Code of 1986 to index the gas and diesel tax and rebuild our roads, bridges, and transit systems.

IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2017

Mr. DEFAZIO introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to index the gas and diesel tax and rebuild our roads, bridges, and transit systems.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Investing in America: A Penny for Progress Act”.

SEC. 2. DOUBLE INDEXATION OF GASOLINE AND DIESEL FUELS TAX.

(a) IN GENERAL.—Paragraph (2) of section 4081(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

“(E) INDEX FOR HIGHWAY CONSTRUCTION COST INFLATION AND FUEL EFFICIENCY.—

“(i) IN GENERAL.—In the case of any calendar year after 2017, the 18.3 cents rate in subparagraph (A)(i), the 24.3 cents rate in subparagraph (A)(iii), and the 19.7 cents rate in subparagraph (D), shall each be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the double indexation for the calendar year.

Any increase determined under this subparagraph shall be rounded to the nearest tenth of a cent.

“(ii) EXCEPTION FOR FUEL USED IN AVIATION.—The adjustment under clause (i) shall not apply with respect to the rate of tax under subparagraph (A)(iii) for fuel referred to in subparagraph (C).

“(iii) SPECIAL RULES TO STABILIZE RATES.—

“(I) If an adjustment of rates under clause (i) for a calendar year would result in rates in subparagraphs (A)(i), (A)(iii), and (D) in effect for the calendar year greater than 1.5 cents more than the rates in effect under such subparagraphs for the preceding calendar year—

“(aa) the rates in subparagraphs (A)(i), (A)(iii), and (D) for the calendar year shall be the rates in effect under such subparagraphs for the preceding calendar year plus 1.5 cents,

“(bb) any adjustment of rates that would have occurred under clause (i) if item (aa) were not in effect shall be applied under that clause—

“(AA) in the succeeding calendar year or years after the rate is established under clause (i) for that year, and

“(BB) until the cumulative adjustment of rates equals the adjustment that would have applied under clause (i) if item (aa) were not in effect, and

“(cc) an adjustment of rates under item (bb) remains subject to item (aa).

“(II) If an adjustment of rates under clause (i) for a calendar year would result in rates in subparagraphs (A)(i), (A)(iii), and (D) in effect for the calendar year less than the rates in effect under such subparagraphs for the preceding calendar year

“(aa) no adjustment of such rates shall be made for the calendar year, and

“(bb) the rates in subparagraphs (A)(i), (A)(iii), and (D) for the calendar year shall be the rates in effect under such subparagraphs for the preceding calendar year.

“(iv) DOUBLE INDEXATION.—For purposes of clause (i), the double indexation for any calendar year is the sum of—

“(I) the highway construction cost adjustment, and

“(II) the CAFE fuel saved adjustment.

“(v) HIGHWAY CONSTRUCTION COST ADJUSTMENT.—For purposes of clause (iv), the highway construction cost adjustment for any calendar year is the percentage (if any) by which—

“(I) the National Highway Construction Cost Index for the preceding calendar year, exceeds

“(II) the National Highway Construction Cost Index for calendar year 2016 or, if applicable, the first year of a successor index.

“(vi) NATIONAL HIGHWAY CONSTRUCTION COST INDEX FOR ANY CALENDAR YEAR.—For purposes of clause (v), the National Highway Construction Cost Index for any calendar year is the average of the National Highway Construction Cost Index as of the close of the 12-month period ending on June 30 of such calendar year.

“(vii) NATIONAL HIGHWAY CONSTRUCTION COST INDEX.—For purposes of clause (v), the term ‘National Highway Construction Cost Index’ means the last National Highway Construction Cost Index published by the Department of Transportation or successor index.

“(viii) CAFE FUEL SAVED ADJUSTMENT.—For purposes of clause (iv), the CAFE fuel saved adjustment for a calendar year is the percentage (if any) by which annual motor fuel use is reduced by the estimated CAFE fuel saved for that calendar year from the annual motor fuel use for the prior calendar year.

“(ix) ESTIMATED CAFE FUEL SAVED.—The term ‘estimated CAFE fuel saved’ for a calendar year means—

“(I) In the case of the 18.3 cents rate in subparagraph (A) (i), the combined gasoline fuel saved estimates issued by the National Highway Traffic Safety Administration and the Environmental Protection Agency for passenger automobiles and light trucks published in the Federal Register on May 7, 2010, and October 15, 2012, and for medium and heavy-duty engines and vehicles published in the Federal Register on September 15, 2011, and October 25, 2016, as part of final rules to implement corporate average fuel economy standards, and such successor estimates included in successor rules.

“(II) In the case of the 24.3 cents rate in subparagraph (A) (iii) and the 19.7 cents rate in subparagraph (D), the combined diesel fuel saved estimates issued by the National Highway Traffic Safety Administration and the Environmental Protection Agency for medium and heavy-duty engines and vehicles published in the Federal Register on September 15, 2011, and October 25, 2016, as part of final rules to implement corporate average fuel economy standards, and such successor estimates included in successor rules.

“(x) ANNUAL MOTOR FUEL USE.—The term ‘annual motor fuel use’ means—

“(I) In the case of the 18.3 cents rate in subparagraph (A) (i), the total number of gallons of gasoline used in a calendar year in highway use, as published by the Federal Highway Administration as part of its annual motor fuel data survey.

“(II) In the case of the 24.3 cents rate in subparagraph (A) (iii) and the 19.7 cents rate in subparagraph (D), the total number of gallons of diesel used in a calendar year in highway use, as published by the Federal Highway Administration as part of its annual motor fuel data survey.

“(xi) NOTICE.—Not later than December 15, 2017, and annually thereafter, the Secretary shall publish the rates of tax as adjusted under this subparagraph for the succeeding calendar year.”

(b) RETAIL FUEL EXCISE TAX.—Subsection (a) of section 4041 of such Code is amended by adding at the end the following new paragraph:

“(4) HIGHWAY INFLATION ADJUSTMENT.—If an increase in rates is made under section 4081(a)(2)(E) for any calendar year after 2017, then each dollar amount in paragraphs (1)(C)(iii)(I), (2)(B)(i), (2)(B)(ii), (2)(B)(iv), and (3)(A) of this subsection and in subsections (b)(2)(A)(i), (b)(2)(C)(i), and (m)(1) shall be increased in the same manner and subject to the same conditions that are applicable under section 4081(a)(2)(E).”

(c) CONFORMING AMENDMENT.—Subparagraph (A) of section 4081(a)(2) of such Code is amended by striking “The rate” and inserting “Except as provided in subparagraph (C), the rate”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning after July 31, 2017.

SEC. 3. TRANSPORTATION BONDS.

(a) ISSUANCE.—The Secretary of the Treasury shall, pursuant to subchapter I of chapter 31 of title 31, United States Code, issue bonds, to be known as “Invest in America Bonds”, which meet the terms and conditions of subsection (b), and the bond revenue shall be transferred to the Highway Trust Fund with 80 percent allocated to the Highway Account (as defined in section 9503(e)(5)(B) of the Internal Revenue Code of 1986) and 20 percent allocated to the Mass Transit Account.

(b) TERMS AND CONDITIONS.—

(1) TERM.—Bonds issued under subsection (a) shall have terms of 30 years.

(2) FREQUENCY.—Bonds shall be issued under subsection (a) every fiscal year.

(3) FACE AMOUNT FORMULA FOR FISCAL YEARS 2017 THROUGH 2020.—Bonds issued under subsection (a) for each of fiscal years 2017 through 2020 shall have a face amount that equals, for that fiscal year—

(A) the Federal share (as defined in section 503(b)(8)(C)(v) of title 23, United States Code, and section 308(e)(3)(E) of title 49, United States Code) of the most recent estimates required under section 503(b)(8)(C)

(iv) of title 23, United States Code, and section 308(e)(3)(D) of title 49, United States Code; minus

(B) the sum of the amount authorized in section 5338(a)(1) of title 49, United States Code, the amounts authorized in section 1101(a) of the FAST Act (Public Law 114–94; 129 Stat. 1322), the amounts authorized in section 4001(a) of the FAST Act (Public Law 114–94; 129 Stat. 1497), and the amounts authorized in section 31104(a) and 31110(a) of title 49, United States Code, for that fiscal year.

(4) FACE AMOUNT FORMULA FOR FISCAL YEARS 2021 THROUGH 2030.—Bonds issued under subsection (a) for each of fiscal years 2021 through 2030 shall have a face amount that equals, for that fiscal year—

(A) the Federal share (as defined in section 503(b)(8)(C)(v) of title 23, United States Code, and section 308(e)(3)(E) of title 49, United States Code) of the most recent estimates required under section 503(b)(8)(C) (iv) of title 23, United States Code, and section 308(e)(3)(D) of title 49, United States Code; minus

(B) the expected revenue deposited into the Highway Trust Fund for the corresponding fiscal year not including revenues attributed to this section.

(5) AMOUNT OUTSTANDING.—Notwithstanding paragraphs (3) and (4), the total face amount of bonds issued under subsection (a) may not exceed the amount the Secretary of the Treasury and the Secretary of Transportation determines can be redeemed, taking into account this section and section 9503(g) of the Internal Revenue Code of 1986.

(6) SUNSET.—No bonds may be issued under subsection (a) after September 30, 2030.

(c) CAPITAL INVESTMENT GRANT SPECIAL RULE.—Prior to the application of section 105 of title 23, United States Code, for a fiscal year, an amount equal to a percentage of bond revenue transferred to the Highway Trust Fund and allocated to the Mass Transit Account equal to the ratio of the funds appropriated in the preceding fiscal year to carry out section 5309 of title 49, United States Code, to the funds made available in the same fiscal year to carry out section 5338(a)(1) of title 49, United States Code, shall be available to make additional grants pursuant to section 5309 of title 49, United States Code.

(d) SET-ASIDE SPECIAL RULE.—

(1) IN GENERAL.—In determining the additional amounts of contract authority to be made available under section 105 of title 23, United States Code, for a fiscal year, the Secretary shall make adjustments under section 105(c)(1) of title 23, United States Code, for a set-aside from the Highway Account (as defined in section 9503(e)(5)(B) of the Internal Revenue Code of 1986) or Mass Transit Account referred to in paragraph (2)—

(A) by determining the ratio that—

(i) the amount authorized to be appropriated for the set-aside from the account for that fiscal year; bears to

(ii) the total amount authorized to be appropriated for that fiscal year for all programs (except as provided in section 105(d) of title 23, United States Code) under such account;

(B) by multiplying the ratio determined under subparagraph (A) by the amount of the adjustment for the account determined under section 105(b)(1)(B) of title 23, United States Code; and

(C) by adjusting the amount that the Secretary would have allocated for the set-aside for that fiscal year but for section 105 of title 23, United States Code, by the amount calculated under subparagraph (B).

(2) SET-ASIDES.—The set-asides referred to in paragraph (1) are the amounts reserved for a fiscal year under each of—

(A) section 104(b)(5)(B) of title 23, United States Code;

(B) sections 104(h)(1) and 104(h)(2) of title 23, United States Code;

(C) section 130(e)(1) of title 23, United States Code;

(D) section 133(h)(1)(A) of title 23, United States Code;

(E) section 1519(a) of MAP-21 (126 Stat. 524), as amended by section 1418 of the FAST Act (129 Stat. 1423); and

(F) section 5336(h)(1) of title 49, United States Code.

(3) CONFORMING AMENDMENTS.—Section 105(g) of title 23, United States Code, is amended—

(A) in paragraph (2) by inserting “or the Temporary Transportation Bond Repayment Account” before the period at the end; and

(B) by adding at the end the following:

“(4) TEMPORARY TRANSPORTATION BOND REPAYMENT ACCOUNT.—The term ‘Temporary Transportation Bond Repayment Account’ means the Temporary Transportation Bond Repayment Account of the Highway Trust Fund established under section 9503(g) of the Internal Revenue Code of 1986.”.

(e) TEMPORARY TRANSPORTATION BOND REPAYMENT ACCOUNT.—Section 9503 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(g) ESTABLISHMENT OF TEMPORARY TRANSPORTATION BOND REPAYMENT ACCOUNT.—

“(1) CREATION OF ACCOUNT.—There is established in the Highway Trust Fund a separate account to be known as the ‘Temporary Transportation Bond Repayment Account’ consisting of such amounts as may be transferred or credited to the Temporary Transportation Bond Repayment Account as provided in this section.

“(2) TRANSFERS TO TEMPORARY TRANSPORTATION BOND REPAYMENT ACCOUNT.—The Secretary of the Treasury shall transfer to the Temporary Transportation Bond Repayment Account the portion of the amounts appropriated to the Highway Trust Fund under subsection (b) which are attributable to the increase in taxes under—

“(A) section 4041 by reason of section 4041(a)(4), and

“(B) section 4081 by reason of section 4081(a)(2)(E).

“(3) EXPENDITURES FROM ACCOUNT.—Amounts in the Temporary Transportation Bond Repayment Account shall be available for redeeming bonds and paying interest payments issued under section 3 of the Investing in America: A Penny for Progress Act.

“(4) TERMINATION.—When all bonds issued under section 3 of the Investing in America: A Penny for Progress Act have been redeemed—

“(A) the Temporary Transportation Bond Repayment Account shall close, and

“(B) all amounts in the account (and all future revenue that, absent this paragraph, would have been transferred to the account pursuant to paragraph (2)) shall be transferred to the Highway Trust Fund with 80

percent allocated to the Highway Account (as defined in section 9503(e)(5)(B) of the Internal Revenue Code of 1986) and 20 percent allocated to the Mass Transit Account.”.

(f) **CONFORMING AMENDMENT.**—Section 9503(e)(5)(B) of the Internal Revenue Code of 1986 is amended by inserting “or the Temporary Transportation Bond Repayment Account” before the period at the end.

(g) **EFFECTIVE DATE.**—The amendments made by this section shall apply upon enactment of this law.

SEC. 4. CONDITIONS AND PERFORMANCE REPORTING.

(a) **REPORT ON INFRASTRUCTURE INVESTMENT NEEDS.**—Section 503(b)(8) of title 23, United States Code, is amended to read as follows:

“(8) **REPORT ON INFRASTRUCTURE INVESTMENT NEEDS.**—

“(A) **IN GENERAL.**—Not later than July 31, 2018, and July 31 of every second year thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes—

“(i) the current conditions and performance of highway and bridge facilities in the United States, including the backlog of current highway and bridge needs; and

“(ii) the future needs of highway and bridge facilities in the United States.

“(B) **COMPARISONS.**—A report under this paragraph shall include all information necessary to relate and compare the conditions and performance measures used in the previous biennial reports to the conditions and performance measures used in the current report.

“(C) **REPORT REQUIREMENTS.**—In developing a report under this paragraph, the Secretary shall—

“(i) prepare a complete assessment of highway and bridge facilities in the United States;

“(ii) for the succeeding 20-year period, estimate future capital requirements for highway and bridge facilities in the United States at specified levels of service;

“(iii) for the succeeding 20-year period, estimate the annual expenditures necessary to fund capital projects in the United States that—

“(I) are necessary to address the current and future needs of highway and bridge facilities; and

“(II) have a benefit-cost ratio greater than or equal to 1;

“(iv) for the period ending December 31, 2036, estimate the annual expenditures necessary to fund capital projects in the United States that—

“(I) are necessary to address the current and future needs of highway and bridge facilities; and

“(II) have a benefit-cost ratio greater than or equal to 1; and

“(v) for the preceding 10-year period, estimate the average annual percentage of the total expenditures made for highway and bridge capital projects by all levels of government that was derived from Federal funds.”.

(b) REPORT ON PUBLIC TRANSPORTATION INVESTMENT NEEDS.—Section 308(e) of title 49, United States Code, is amended to read as follows:

“(e) REPORT ON PUBLIC TRANSPORTATION INVESTMENT NEEDS.—

“(1) IN GENERAL.—Not later than July 31, 2018, and July 31 of every second year thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that describes—

“(A) the current conditions and performance of public transportation systems in the United States, including the state of good repair backlog among existing public transportation systems; and

“(B) the future needs of public transportation systems in the United States.

“(2) COMPARISONS.—A report under this subsection shall include all information necessary to relate and compare the conditions and performance measures used in the previous biennial reports to the conditions and performance measures used in the current report.

“(3) CONTENTS.—In developing a report under this subsection, the Secretary shall—

“(A) prepare a complete assessment of public transportation systems in the United States;

“(B) for the succeeding 20-year period, estimate the future capital requirements for public transportation systems in the United States at specified levels of service;

“(C) for the succeeding 20-year period, estimate the annual capital expenditures necessary to fund capital projects in the United States that have a benefit-cost ratio greater than one and are necessary—

“(i) to achieve and maintain a state of good repair for public transportation systems; and

“(ii) to support the long-term trend rate of public transportation ridership growth, plus an additional 0.3 percent; and

“(D) for the period ending December 31, 2036, estimate the annual capital expenditures necessary to fund capital projects in the United States that have a benefit-cost ratio greater than one and are necessary—

“(i) to achieve and maintain a state of good repair for public transportation systems; and

“(ii) to support the long-term trend rate of public transportation ridership growth, plus an additional 0.3 percent; and

“(E) for the preceding 10-year period, estimate the average annual percentage of the total expenditures made by all levels of government for public transportation capital expenditures that was derived from Federal funds.”.

(c) INTERIM REPORTING METHOD.—Prior to the publication of the reports required under the amendments made by subsections (a) and (b), the Secretary of Transportation shall provide to the Secretary of the Treasury the data necessary to calculate the bond face amount under section 3(b) using the most recent published reports required by section 503(b)(8) of title 23, United States Code, and section 308(e) of title 49, United States Code.

SEC. 5. REPEAL OF FAST ACT RESCISSION.

Section 1438 of the FAST Act (Public Law 114–94; 129 Stat. 1432), and the item relating to that section in section 1(b) of that Act, are repealed.



BART Bill Analysis and Recommendation

State: AB 1509

Author: Baker (R-San Ramon)

Co-author(s): Grayson (D-Concord)

Title: San Francisco Bay Area Rapid Transit District, Redirecting Existing Funds

Sponsor: Author

Background:

In November 2016, Bay Area voters approved Measure RR, BART's \$3.5 billion infrastructure bond designed to keep the system safe and reliable. Measure RR, as passed by more than 2/3rds of area voters, does not contain any of the restrictions envisioned in AB 1509.

Purpose:

AB 1509 would prohibit BART from redirecting any existing funds dedicated for system infrastructure capital improvements or rolling stock to cover operating expenses following the approval of Measure RR. The bill would require BART in any fiscal year that it makes an expenditure of Measure RR revenues to expend from other sources of revenue an amount not less than the annual average of its expenditures on acquisition, construction, or completion of rapid transit facilities during the 2013-14, 2014-15, and 2015-16 fiscal years.

AB 1509 would authorize the State Controller to perform audits to ensure compliance and if BART has not complied, would require the Controller to withhold an amount, equal to the difference between actual and required expenditures, from distributions to BART under transactions and use tax provisions.

BART Impact:

This bill could require expenditures not required or envisioned by Measure RR as passed by the voters and could require funding prioritizations irrespective of system needs at that time. Situations and prioritizations may change over time and removing Board flexibility in making decisions may not be in the best interest of the District.

Known Support/Opposition:

Support and Oppose: Unknown at this time.

Other Comments:

Status:

Hearing set in Assembly Local Government Committee on 4/19/17.

Recommendation:

Support

Watch

Oppose

Analysis completed on 4/12/17

AMENDED IN ASSEMBLY APRIL 6, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1509

**Introduced by Assembly Member Baker
(Coauthor: Assembly Member Grayson)**

February 17, 2017

An act to add Section 29158.1 to the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1509, as amended, Baker. San Francisco Bay Area Rapid Transit District.

(1) Existing law establishes the San Francisco Bay Area Rapid Transit District (BART), which is authorized to acquire, construct, own, operate, control, or use rights-of-way, rail lines, bus lines, stations, platforms, switches, yards, terminals, parking lots, and any and all other facilities necessary or convenient for rapid transit service. Existing law imposes a permanent $\frac{1}{2}$ of 1% transactions and use tax in the Counties of Alameda, Contra Costa, and San Francisco, with the net revenues from the tax allocated to transit purposes. Existing law requires 75% of the net revenues to be allocated to BART.

Existing local law, ballot Measure RR, adopted by the voters of the Counties of San Francisco, Alameda, and Contra Costa on November 8, 2016, pursuant to a $\frac{2}{3}$ vote, enacted a regional bond measure authorizing BART to issue \$3.5 billion in general obligation bonds for the acquisition or improvement of real property to replace or upgrade severely worn tracks, tunnels damaged by water intrusion, outdated train control systems, and other deteriorating infrastructure to keep BART safe, prevent accidents, breakdowns, or delays, relieve

overcrowding, reduce traffic congestion and pollution, improve earthquake safety, and increase access for seniors and persons with disabilities.

This bill would prohibit BART from redirecting any existing funds dedicated for system *infrastructure capital* improvements or *rolling stock* to cover operating expenses following the approval of Measure RR. The bill would also require BART in any fiscal year that it makes an expenditure of Measure RR revenues to expend from other sources of revenue an amount not less than the annual average of its expenditures on acquisition, construction, or completion of rapid transit facilities during the 2013–14, 2014–15, and 2015–16 fiscal years. By imposing new duties on a local governmental entity, the bill would create a state-mandated local program.

The bill would authorize the Controller to perform audits to ensure compliance with certain of these provisions and if BART has not complied with those provisions, the Controller would be required to withhold an amount, equal to the difference between actual and required expenditures, from distributions provided to BART under the transactions and use tax provisions described above.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 29158.1 is added to the Public Utilities
- 2 Code, to read:
- 3 29158.1. (a) The district shall maintain its existing commitment
- 4 of funds for the acquisition, construction, or completion of rapid
- 5 transit facilities. Following approval of Measure RR at the
- 6 November 8, 2016, election, the district shall not redirect any
- 7 existing funds dedicated for system *infrastructure capital*
- 8 improvements or *rolling stock* to cover operating expenses.



BART Bill Analysis and Recommendation

State: AB 758

Author: Eggman (D-Stockton) and Baker (R-San Ramon)

Title: Tri-Valley-San Joaquin Valley Regional Rail Authority

Sponsor: Authors

Background:

AB 758 is informed by last year's AB 2762 (Baker), which would have created the Altamont Pass Regional Rail Authority, with substantially similar purpose and authority as granted to the regional rail authority created in AB 758. BART currently participates in a regional working group engaged in discussing best possibilities for regional transportation connections in the Tri-Valley area.

Purpose:

AB 758 would establish the Tri-Valley-San Joaquin Valley Regional Rail Authority for purposes of planning and delivering an interregional rail connection between the San Joaquin Valley and BART and the Altamont Corridor Express in the Tri-Valley.

The bill would require the governing board to be composed of 14 representatives and would authorize the authority to appoint an executive who may appoint staff or retain consultants. AB 758 would provide specified authorizations and duties to the authority as well.

BART Impact:

AB 758 would allow BART one seat on a 14-member body that would be making major regional decisions with significant impact on BART. The bill would require all unencumbered BART moneys dedicated for the completion of the Livermore connection to be transferred to the authority and does not provide for BART approval for planning, design, or construction of the extension, but requires BART to assume ownership of all physical improvements, and to assume operational control, maintenance responsibilities, and related financial obligations for the connection, upon its completion.

Known Support/Opposition:

Support and Oppose: Unknown at this time.

Other Comments:

It appears premature to specify in statute outcomes of what should be a serious and thoughtful deliberative process between multiple public agencies, especially when the Authority has not yet been created.

Status:

Referred to Assembly Transportation Committee, no hearing date set.

Recommendation:

Support

Watch

Oppose

Analysis completed on 4/12/17

AMENDED IN ASSEMBLY MARCH 21, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 758

Introduced by Assembly Members Eggman and Baker

February 15, 2017

An act to amend Section 5431 of the Public Utilities Code, relating to transportation. An act to add Chapter 8 (commencing with Section 132651) to Division 12.7 of the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 758, as amended, Eggman. ~~Transportation network companies.~~ *Transportation: Tri-Valley-San Joaquin Valley Regional Rail Authority.*

Existing law provides for the creation of statewide and local transportation agencies, which may be established as joint powers authorities or established expressly by statute. Existing law establishes the Bay Area Rapid Transit District, which is authorized to acquire, construct, own, operate, control, or use rights-of-way, rail lines, bus lines, stations, platforms, switches, yards, terminals, parking lots, and any and all other facilities necessary or convenient for rapid transit service.

This bill would establish the Tri-Valley-San Joaquin Valley Regional Rail Authority for purposes of planning and delivering a cost effective and responsive interregional rail connection between the San Joaquin Valley and the Bay Area Rapid Transit District's rapid transit system and the Altamont Corridor Express in the Tri-Valley, that meets the goals and objectives of the community. The bill would require the authority's governing board to be composed of 14 representatives and would authorize the authority to appoint an executive who may appoint

staff or retain consultants. The bill would provide specified authorizations and duties to the authority.

This bill would require all unencumbered moneys dedicated for the completion of the connection to be transferred to the authority. The bill would require the Bay Area Rapid Transit District to assume ownership of all physical improvements, and to assume operational control, maintenance responsibilities, and related financial obligations for the connection, upon its completion. The bill would require the Department of Transportation to expedite reviews and requests related to the connection. The bill would require the authority to provide a project update report to the public, to be posted on the authority's Internet Web site, on the development and implementation of the connection.

By imposing new duties on local governmental entities, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~The Passenger Charter-party Carriers' Act provides for the regulation of charter-party carriers of passengers by the Public Utilities Commission and includes specific requirements for liability insurance coverage, background checks, and other regulatory matters applicable to transportation network companies, as defined, and their participating drivers, as defined.~~

~~This bill would make a nonsubstantive change to the definition of a participating driver for purposes of the regulation of transportation network companies.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Commute patterns throughout northern California, and in
- 4 particular through the Altamont Pass Corridor, traverse the



BART Bill Analysis and Recommendation

State: SB 614

Author: Hertzberg (D – Los Angeles)

Title: Public Transportation Agencies: Administrative Penalties

Sponsor: California Transit Association and Western Center on Law and Poverty

Background:

Existing law authorizes a public transportation agency to adopt and enforce an ordinance to impose civil administrative penalties for fare evasion and other passenger misconduct on or in a transit facility or vehicle in lieu of criminal penalties. Existing law also requires these administrative penalties to be deposited in the general fund of the county in which the citation is administered.

Purpose:

SB 614 would enable transit agencies who implement an administrative process to capture the fine revenue from all administrative citations issued under Public Utilities Code Section 99580.

SB 614 would also reduce the maximum fines allowed under the administrative process and allow for low-income individuals and minors to opt for community service in lieu of payment of the citation. In the bill, maximum fines would go from \$200 to \$125 upon a first or second violation and from \$400 to \$200 upon a third or subsequent violation.

BART Impact:

At the Board Workshop in January 2017, Directors expressed an interest in addressing the growing problem of fare evasion and developing solutions to increase the personal security and safety of customers at our stations.

BART management and staff are collaborating to meet the continuing challenge of fare evasion through a three-tiered strategy of enforcement, station hardening, and education. BART's strategy includes increased staffing and establishing fare enforcement teams, clarifying fare policy and rules through a new BART ordinance, and development of new tools that enable ticket reading outside of station agent booths.

Currently, an ordinance is being drafted to reinforce that all people in the paid area of BART must possess a valid ticket, and to clarify "proof-of-payment" requirements. If the issuance of a monetary citation is included within the draft ordinance, SB 614 would ensure that fine revenue is captured by BART and not the county in which the citation is administered. SB 614 would also require a community service option in lieu of payment for a citation.

Known Support/Opposition:

Support: California Transit Association and Western Center on Law and Poverty (Sponsors)

Opposition: Unknown at this time

Other Comments:

This bill is in line with the Board's adopted goal of improving transit enforcement capabilities related to fare evasion. However, staff recommend a WATCH position, until BART policies and specific rules related to enforcing fare evasion are adopted by the Board.

Status:

Hearing set in Senate Transportation and Housing Committee on 4/18/17.

Recommendation:

Support

Watch

Oppose

Analysis completed on 4/12/17

AMENDED IN SENATE APRIL 5, 2017

SENATE BILL

No. 614

Introduced by Senator Hertzberg

February 17, 2017

An act to amend Section 640 of the Penal Code, and to amend Sections 99580 and 99581 of the Public Utilities Code, relating to public transit.

LEGISLATIVE COUNSEL'S DIGEST

SB 614, as amended, Hertzberg. Public transportation agencies: administrative penalties.

Existing law makes it a crime, punishable as an infraction or misdemeanor, as applicable, for a person to commit certain acts on or in a facility or vehicle of a public transportation system. Existing law authorizes a public transportation agency to adopt and enforce an ordinance to impose and enforce civil administrative penalties for certain fare evasion and other passenger misconduct on or in a transit facility or vehicle. Existing law prohibits a public transportation agency from establishing penalty amounts that exceed the maximum penalty amount established for the criminal penalties. Existing law requires these administrative penalties to be deposited in the general fund of the county in which the citation is administered.

This bill would instead require the administrative penalties to be deposited with the public transportation agency that issued the citation. In setting the amount of administrative penalties for fare evasion and other passenger misconduct violations, the bill would instead prohibit a public transportation agency from establishing penalty amounts that

exceed \$125 upon a first or 2nd violation and \$200 upon a 3rd or subsequent violation.

Existing law provides, following a determination by a hearing officer that a person has committed a fare evasion or passenger conduct violation, that the hearing officer may allow payment of the fare evasion or passenger conduct penalty in installments or deferred payment if the person provides satisfactory evidence of an inability to pay the fare evasion or passenger conduct penalty in full. Existing law also provides that if authorized by the issuing agency, the hearing officer may permit the performance of community service in lieu of payment of the fare evasion or passenger conduct penalty.

This bill would instead require an issuing agency to permit the performance of community service in lieu of payment of the fare evasion or passenger conduct penalty but would limit this option to persons under 18 years of age and persons who provide satisfactory evidence of an inability to pay the fare evasion or passenger conduct penalty in full.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 640 of the Penal Code is amended to
2 read:

3 640. (a) (1) Any of the acts described in paragraphs (1) to (6),
4 inclusive, of subdivision (b) is an infraction punishable by a fine
5 not to exceed two hundred fifty dollars (\$250) and by community
6 service for a total time not to exceed 48 hours over a period not to
7 exceed 30 days, during a time other than during the violator's hours
8 of school attendance or employment. Except as provided in
9 subdivision (g), any of the acts described in paragraphs (1) to (3),
10 inclusive, of subdivision (c), upon a first or second violation, is
11 an infraction punishable by a fine not to exceed two hundred fifty
12 dollars (\$250) and by community service for a total time not to
13 exceed 48 hours over a period not to exceed 30 days, during a time
14 other than during the violator's hours of school attendance or
15 employment. Except as provided in subdivision (g), a third or
16 subsequent violation of any of the acts described in paragraphs (1)
17 to (3), inclusive, of subdivision (c) is a misdemeanor punishable
18 by a fine of not more than four hundred dollars (\$400) or by



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>10 APRIL 2017</i> <i>Robert M. Powers</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 3/6/2017		BOARD INITIATED ITEM: No		
Originator/Prepared by: Tim Lohrentz Dept: Office of Civil Rights Signature/Date: <i>Tim Lohrentz</i> <i>4/7/17</i>	General Counsel <i>[Signature]</i> <i>4/7/17</i> []	Controller/Treasurer <i>Ching Gou</i> <i>4/7/17</i> []	District Secretary []	BARC <i>Powers</i> <i>10 APRIL 2017</i> []

PROPOSED SMALL BUSINESS PROGRAM MODIFICATIONS

PURPOSE: To request that the Board adopt the modifications to the BART Small Business (SB) Program as authorized by California Public Contract Code (PCC) Section 2002, to include a local small business preference

DISCUSSION:

In September 2011, the District approved an SB Program for non-federally funded contracts and implemented the program in January 2013. The SB Program is based on bid preferences for SB Prime Bidders and, in larger contracts, for Bidders that meet an SB Subcontractor Participation goal. Under the current SB Program for contracts of less than \$10,000,000, the program provides an SB Prime Preference of up to 5% of the lowest responsive Bidder's price, up to a maximum of \$250,000. For Contracts of over \$10,000,000, the program provides the Prime Bidders that meet an SB Subcontractor Participation goal with a preference of up to 5% of the lowest responsive Bidder's price up to \$1,000,000. Disabled Veteran Business Enterprises (DVBEs) certified by the California Department of General Services are considered SBs for this program.

In 2013 the State of California modified PCC §2002 to authorize local governments to include a local business preference as part of a small business program. With the passage of the BART Measure RR Bond by voters in Alameda, Contra Costa, and San Francisco counties in 2016, one of BART's goals is to maximize opportunities for local small businesses within those three respective counties. In part, BART can help achieve this goal by adding a local small business component to its existing SB Program.

The proposed modifications to the SB Program are as follows:

PROPOSED SMALL BUSINESS PROGRAM MODIFICATIONS (cont.)

1. To decrease the range where the SB Subcontractor Participation Goal applies from \$10,000,000 or larger to \$5,000,000 or larger. For contracts between \$5,000,000 and \$10,000,000, staff will decide which SB Preference – the SB Prime Preference or the SB Subcontractor Participation Goal – will be applied to the contract prior to the Invitation to Bid, depending on subcontracting opportunities and the potential for SBs to bid as prime contractors.
2. To add a local small business preference to the Small Business program when contracts are funded by BART Measure RR. The Local Small Business status would be limited to firms located in the three counties of Alameda, Contra Costa, and San Francisco. SBs and DVBEs certified by the California Department of General Services and whose principal place of business is located within the three counties would be recognized as a Local Small Business (Local SB), with the location to be verified by BART. Contracts with BART Measure RR funding would have the following Local SB preference features:
 1. For Contracts under \$5,000,000, bidders which are Local SBs will be granted a Prime Preference of 5% of the Bid Price of the lowest responsible Bidder up to a maximum of \$250,000.
 2. For Contracts between \$5,000,000 and \$10,000,000, staff will decide if a Contract has a Local SB Prime Preference or a Local SB Subcontractor Participation Goal. For Contracts with a Local SB Prime Preference, bidders which are Local SBs will be granted a Prime Preference of 5% of the Bid Price of the lowest responsible Bidder up to a maximum of \$500,000. For Contracts with a Local SB Subcontractor Participation Goal, bidders will be granted a Prime Preference of 5% of the Bid Price of the lowest responsible Bidder if the bidder meets the Local SB Subcontracting Goal, up to a maximum of \$500,000.
 3. For Contracts greater than \$10,000,000, bidders will be granted a Prime Preference of 5% of the Bid Price of the lowest responsible Bidder if the bidder meets the Local SB Subcontractor Participation Goal, up to a maximum of \$1,500,000.

FISCAL IMPACT: To date, the actual total cost to cover the SB Bid Preferences during the first four years of the SB program has been less than \$30,000. Adding a Local SB preference to the SB Program may cause a net increase in fiscal impact although the proposal also has impacts that could decrease the cost of the SB bid preference. SB preferences are paid through the project budget.

ALTERNATIVES: The alternative is not to adopt the modifications and to maintain the SB Program as it is, with no local small business preference.

RECOMMENDATION: It is recommended that the Board adopt the following motion:

MOTION:

The Board hereby adopts the modifications to BART's Small Business Program for non-Federal Contracts by adding a Local Small Business Preference on contracts that are funded in part or in whole by BART Measure RR, for firms located in the counties of Alameda, Contra Costa, and San Francisco, that meet either the SB Prime Preference or the SB Subcontractor Participation Goal.

SMALL BUSINESS PROGRAM

Policy Description (V09-01-11)

Amendment 1 (V11-16-12)

Amendment 2 (04-6-17)

1. SMALL BUSINESS PROGRAM POLICY

It is the Policy of the San Francisco Bay Area Rapid Transit District ("BART") to encourage the participation of Small Businesses in BART contracts. Accordingly, BART hereby adopts this Small Business ("SB") Program pursuant to California Public Contract Code Section 2002. The purpose of the SB Program is to encourage and facilitate full and equitable participation by Small Businesses in BART construction, procurement, and services contracts and agreements that are awarded through a competitive process and are financed solely with local and state funds ("non-federal contracts"). As appropriate, the SB Program seeks to achieve these objectives on three levels: (1) BART's award of Contracts and Agreements to SBs, (2) the award of First Tier Subcontracts to SBs by Prime Contractors, Suppliers, and Consultants, and (3) the award to Second Tier SB Subcontractors by First Tier Subcontractors.

2. FINDINGS

- **BART** enters into non-federal contracts and agreements for construction, procurement, and services. Many of the contracts and agreements in each of these areas afford opportunities for SBs to perform work as Contractors, Suppliers, Consultants, and as Subcontractors, Subsuppliers, and Subconsultants.
- **SBs** generate jobs, provide economic opportunity, and boost economic output throughout California and, in particular, in the counties in which BART operates and does business – Alameda County, Contra Costa County, City and County of San Francisco, and San Mateo County.
- **BART** desires to contribute to the growth and stability of the small business community.
- **BART** recognizes, and through the SB Program, works to address and mitigate, the difficulties SBs may encounter when competing against larger more established businesses for BART contracts and agreements.
- **BART** recognizes that this SB Program is only applicable to non-federal construction, procurement, and services contracts, agreements such as repair services, technical support services, real estate support services, professional services agreements, and design-build contracts issued pursuant to Public Contract Code Section 20209.5, to be awarded through a competitive process where price and other factors are considered in the award.
- **BART** recognizes that Disabled Veteran Business Enterprises (“DVBES”) should be utilized to the extent possible in BART’s construction, procurement, and services contracts and agreements as part of the Small Business Program.

3. DEFINITIONS

- **“Agreement”** means an agreement between BART and a Consultant for services.
- **“Bid”** means the proposal or offer of the Bidder for the Construction or Procurement Contract when completed and submitted on the prescribed Bid Form.
- **“Bidder”** or “Proposer” means any individual, firm, partnership, joint venture, corporation, or combination thereof (collectively “firm”), submitting a Bid or Proposal for a contract or services agreement, acting directly or through a duly authorized representative.
- **“Consultant”** means a firm that has entered into an Agreement with BART.
- **“Contract”** refers collectively to Prime Construction Contracts, First Tier Subcontracts, and Procurement Contracts.
- **“Contractor”** means a Prime Construction Contractor awarded a construction contract by BART.
- **“Disabled Veteran Business Enterprise” or “DVBE”** means a firm that is certified as a Disabled Veteran Business Enterprise by the State of California, Department of General Services and in its database for SBs found at www.dgs.ca.gov.
- **“First Tier Subcontract”** means a contract between a Prime Contractor and First Tier Subcontractor or Subsupplier.
- **“First Tier Subcontractor”, “Subcontractor”, or “Subsupplier”** means a firm that has been awarded a First Tier Contract by a Prime Contractor or a Supplier.

- ***“Local Disabled Veteran Business Enterprise” or “Local DVBE”*** means a firm that is certified as a DVBE by the State of California, Department of General Services, found in the DGS database for SBs at www.dgs.ca.gov, and whose principal place of business is located in one of the three counties of Alameda, Contra Costa, or San Francisco.
- ***“Local Small Business” or “LSB”*** means a firm that is certified as an SB by the State of California, Department of General Services, found in the DGS database for SBs at www.dgs.ca.gov, and whose principal place of business is within one of the three counties of Alameda, Contra Costa, or San Francisco.
- ***“Prime Construction Contract”*** means a construction contract between BART and a Prime Contractor.
- ***“Prime Construction Contractor” or “Contractor”*** means a firm that has been awarded a Prime Construction Contract by BART.
- ***“Procurement Contract”*** means a contract between BART and a Supplier.
- ***“Proposal”*** means the offer of the Proposer for the Services Agreement, in response to BART’s request when completed and submitted on the prescribed Proposal Form.
- ***“Second Tier Subcontractor”*** means a firm that has been awarded a Subcontract by a First Tier Subcontractor.
- ***“Small Business Enterprise” or “SB”*** means a firm (including SB Micros and DVBEs) certified as an SB by the State of California, Department of General Services and found in its database for SBs at www.dgs.ca.gov.
- ***“Subconsultant”*** means a firm that has entered into a subcontract with a Consultant.
- ***“Subcontract”*** means a Contract entered into between a Contractor, Supplier, or Consultant with a Subcontractor, Subsupplier, or Subconsultant, respectively.

- ***“Subsupplier”*** means a firm that has entered into a Contract with a Supplier or Contractor.
- ***“Supplier”*** means a firm that has been awarded a Procurement Contract by BART.

4. RESPONSIBILITIES AND DUTIES OF THE OFFICE OF CIVIL RIGHTS

(a) BART’s General Manager has designated the Department Manager of the Office of Civil Rights as the SB Liaison Officer. As SB Liaison Officer, the Department Manager is responsible for implementing and monitoring the SB Program, coordinating with the District staff in implementing the SB Program, establishing participation goals in Contracts and Agreements where there are subcontracting opportunities for SBs, and making amendments to the SB Program, including alternative SB certification requirements, as needed, with the approval of the Deputy General Manager.

(b) Where Prime Construction Contractors, Suppliers, Consultants, or First Tier Subcontractors, where applicable, commit in their Bid or Proposal to utilize SB First or Second Tier Subcontractors in order to meet the applicable SB goal, the Office of Civil Rights shall monitor their performance to confirm that the SB utilization level presented in the Bid or Proposal is met throughout the life of the Contract or Agreement, including the substitution of SB Subcontractors and change orders, where appropriate.

5. QUALIFICATION AS AN SB, LSB AND DVBE

(a) A Bidder or Proposer seeking an SB preference Contract or Agreement with

BART, or a firm seeking to be recognized as an SB Subcontractor, Subsupplier, or Subconsultant, shall be certified as an SB or DVBE and be listed in the State of California, Department of General Services (“DGS”) database for SBs, including Micro SBs and DVBEs, at www.dgs.ca.gov prior to the submission of the Bid or Proposal.

(b) A firm seeking to be recognized as a Local Small Business (LSB) as a bidder or as an LSB Subcontractor, Subsupplier, or Subconsultant, shall be a certified SB or DVBE in the DGS database for SBs at www.dgs.ca.gov prior to the submission of the Bid or Proposal and shall have its principal place of business in Alameda, Contra Costa, or San Francisco counties, as verified by BART staff. (See Appendix – Verification of LSB Firms.)

(c) Independence and Affiliation: Small Businesses, Local Small Businesses, and DVBEs must be independent businesses. SBs, LSBs, and DVBEs may not be dependent upon other firms for resources, management, or other aspects of its business. The District may take into consideration the affiliation of other businesses that may or may not be SBs, LSBs, or DVBEs. The District, in considering affiliation, will consider identities of interest; the sharing of facilities, employees, ownership, or equipment; contractual relationships between the businesses; or other key factors.

(d) Commercially Useful Function: SBs, DVBEs, and LSBs must perform a commercially useful function. A business performs a commercially useful function when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the business must also be responsible, with

respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. Generally, if the SB or LSB does not perform or exercise responsibility for at least 30 percent of its contract or subcontract with its own workforce, or the portion of work that would be expected to be self-performed on the basis of normal industry practice for the type of work involved, then the District will presume that it is not performing a commercially useful function.

6. SB PROGRAM ANNUAL LIMIT

An annual limit of \$3,000,000 will be available for the total dollar preferences allowed under the SB Program for each fiscal year for Contracts up to a maximum value of \$10,000,000. For Contracts over \$10,000,000, BART's Office of Civil Rights, in conjunction with the project sponsor, will determine on a Contract-by-Contract basis whether the Program will apply and if so, any applicable limits to the total dollar preference.

7. PRIME CONTRACTS AND AGREEMENTS ELIGIBLE FOR SB PREFERENCE

BART, may, at its sole discretion, designate specific Prime Construction Contracts, Procurement Contracts or Agreements with a maximum value of \$10,000,000, as eligible for an SB Bidder or Proposer preference (including LSBs, DVBEs, and Local DVBEs) of up to 5% of the lowest responsible Bidder's or Proposer's Bid or Proposal price, with the exact percentage applicable to a particular Contract or Agreement

determined by BART. The maximum bid preference is \$250,000 on contracts not funded by the Measure RR Bond and \$500,000 on contracts that are funded by the BART Measure RR Bond (Measure RR). SB Prime Construction Contractors, Suppliers, or Consultants who bid on such Contracts or Agreements will be granted the percentage preference set by BART on their Bid or Proposal price only during evaluation for determining the award of the Contract or Agreement. However, the actual Contract or Agreement awarded will be for the amount of the original bid or proposal. The amount of the preference be based on the following:

- If the contract is projected to be for less than \$5 million, and the funding for the contract does *not* include Measure RR money, the SB preference will be 5% of the lowest responsible bid for SBs and DVBEs.
- If the contract is projected to be for less than \$5 million and the funding for the contract *does* include Measure RR money, the SB preference will be 5% of the lowest responsible bid for LSBs and Local DVBEs.

For contracts between that are at least \$5 million and less than \$10 million, BART staff will decide if the contract will have a SB prime preference or a preference based on meeting the SB Subcontractor Participation Goal, but not both. The amount of the preference for contracts with a SB prime preference will be based on the following:

- If the contract has a value of between \$5 million and \$10 million and the funding for the contract does *not* include Measure RR money, the SB preference will be \$250,000 for SBs and DVBEs.
- If the contract has a value of between \$5 million and \$10 million and the funding for the contract *does* include Measure RR money, the SB preference will be 5% of

the lowest responsible bid for LSBs and Local DVBES, with a maximum dollar amount of \$500,000.

8. CONTRACT-SPECIFIC SB SUBCONTRACTOR PARTICIPATION GOALS

BART, in its sole discretion, may establish, for a particular Construction or Procurement Contract or Services Agreement, with a value at or above \$5,000,000, an SB Subcontractor Participation Goal. For contracts that are at least \$5 million and less than \$10 million, BART staff will decide if the contract will have a SB prime preference or a preference based on meeting the SB Subcontractor Participation Goal, but not both. The SB Subcontractor Participation Goal shall be expressed as a percentage of the total Bid or Proposal price for a Contract or Agreement, less allowances and options. The Bidder or Proposer that meets the SB Subcontractor Participation Goal will be eligible for a preference of up to 5% of the lowest responsible Bidder's or Proposer's Bid or Proposal price, only during evaluation for determining the award of the Contract or Agreement, based on the following funding:

- If *not* funded by BART Measure RR Bond (Measure RR), a preference of up to 5% for meeting the SB Subcontractor Participation Goal with SBs or DVBES. The dollar limit cap on the Subcontractor Participation Goal on contracts not funded by Measure RR is \$1,000,000.
- If funded in whole or in part *by Measure RR*, a preference of 5% for meeting the Local SB Subcontractor Participation Goal completely with LSBs and/or Local DVBES. The dollar limit cap on the Subcontractor Participation Goal on Measure RR funded contracts is \$1,500,000.

For a SB or LSB subsupplier, a prime bidder shall receive 60% credit towards an SB or LSB Subcontractor Participation Goal. Any work that an SB or LSB subcontractor subcontracts to a non-SB or non-LSB, respectively, shall not be counted toward the SB or LSB Subcontractor Participation Goal.

Regardless of the preference, the actual Contract or Agreement awarded will be for the original Bid or Proposal. Bidders that do not meet the SB Subcontractor Participation Goal are not eligible for the preference.

9. CONTRACT-SPECIFIC SB LOWER TIER SUBCONTRACTOR PARTICIPATION

BART, in its sole discretion, may recognize Lower Tier SB firms towards meeting the Contract SB Subcontractor Participation Goal on designated prime construction contracts subject to subsections (a) through (c), below. On Measure RR funded contracts, a Lower Tier LSB firm shall count towards meeting a LSB Subcontractor Participation Goal with LSB Subcontractors. The Prime Contractor shall include provisions in its First Tier Subcontracts providing for the following:

(a) A provision requiring that the First or Lower Tier Subcontractor provide copies of the SB Lower Tier subcontracts to BART, and provide other documentation deemed needed by BART to confirm the SB participation.

(b) A provision requiring that the Subcontractor at any tier provide BART with the information designated by BART which BART deems necessary for determining whether the SB Lower Tier Subcontractor is performing work on the Contract,

including reports on payments made to SB Lower Tier Subcontractors.

(c) A provision requiring the First or Lower Tier Subcontractor to make good faith efforts to replace an SB Lower Tier Subcontractor with another SB firm if a substitution is deemed necessary.

10. SB SUBCONTRACTOR PARTICIPATION GOALS IN DESIGN-BUILD CONTRACTS

For design-build contracts issued pursuant to Public Contract Code Section 22160, BART may establish three SB Subcontractor Participation Goals for services, procurement, and construction respectively.

The Proposers for the design-build contracts may be required to meet the SB Subcontractor Participation Goal for services and commit to meeting the SB Subcontractor Participation Goals for procurement and construction in order to be eligible for a preference of up to 5%, which will be credited in the price portion of the Proposal, subject to following the provisions of Section 8. BART staff will monitor the Contractor's performance of the Contract following award to ensure that the Contractor meets the SB Subcontractor Participation Goals for services, procurement and construction.

11. THE CONTRACTOR'S SB OBLIGATIONS AFTER THE AWARD OF THE CONTRACT

In Contracts and Agreements with an SB Subcontractor Participation Goal, the Contractor shall take all reasonable steps to ensure that its SB Subcontractors or

Subconsultants are able to successfully perform their subcontract responsibilities.

12. SUBSTITUTION OF SBs

Should the Contractor, Supplier, Consultant or Other Tier Subcontractor, where applicable, establish that the substitution of any SB or LSB Subcontractor (inclusive of DVBEs and Local DVBEs, throughout), Subsupplier, Subconsultant or, where applicable, Lower Tier SB or LSB Subcontractor, is necessary, the Contractor, Supplier, Consultant or Other Tier Subcontractor, shall, subject to the approval of BART, replace the affected SB or LSB Subcontractor, Subsupplier or Subconsultant with another SB or LSB, as applicable, Subcontractor, Subsupplier or Subconsultant or demonstrate that it made good faith efforts to do so consistent with the following terms:

- ⊗ ***In determining whether*** good faith efforts have been made, BART will consider the steps taken by the Contractor, Supplier, Consultant, or Other Tier Subcontractor, where applicable, on the actions listed below. These steps are reflective of good faith efforts taken by a Contractor, Supplier, Consultant, or Other Tier Subcontractor seeking to replace an SB with another SB in order to maintain its commitment to meet the SB Subcontractor Participation Goal.
- ⊗ ***Identify and select*** specific subcontracting areas of the Contract or Agreement to be performed by SB Subcontractors, Subsuppliers or Subconsultants.
- ⊗ ***Advertise*** the subcontracting opportunity in one or more daily or weekly newspapers, small business association publications, trade-oriented journals or other media specified by BART. Advertise in publications, newspapers, and other media likely to be available to DVBEs. The required advertising shall be completed sufficiently in

advance of the selection decision to allow potential SB Subcontractors, Subsuppliers or Subconsultants a reasonable time in which to bid for or otherwise seek the Subcontract;

- ⊗ **Provide** written solicitation notice of subcontracting opportunities to a reasonable number of SB Subcontractors, Subsuppliers or Subconsultants with enough time prior to the selection decision to allow the SBs to offer a proposal.
- ⊗ **Follow up** initial solicitations to SB Subcontractors, Subsuppliers or Subconsultants to confirm whether the potential SB Subcontractors are interested in performing the Subcontracts;
- ⊗ **Provide** interested SB Subcontractors, Subsuppliers or Subconsultants with information about the proposal, plans, specifications, and/or requirements for the subcontracting work to be performed.
- ⊗ **Request** assistance in identifying potential SB Subcontractors, Subsuppliers, or Subconsultants from community organizations, contractor groups, DVBE organizations, or BART's Office of Civil Rights;
- ⊗ **Offer** assistance with regard to bond or insurance requirements for SBs;
- ⊗ **Negotiate** in good faith with SB Subcontractors, Subsuppliers or Subconsultants who express an interest in subcontracting, as appropriate.

13. SB PARTICIPATION REPORTS

Contractors, Suppliers and Consultants shall submit on a form provided by BART a monthly SB or LSB Subcontractor Utilization Report to the Office of Civil Rights (OCR) showing the total amount paid to date to each SB. Prime contractors, suppliers

or consultants must submit all reports requested by OCR related to the participation of subcontractors, sub-suppliers or subconsultants on BART contracts.

14. FAILURE TO ADHERE TO SB REQUIREMENTS

The failure of a Contractor, Supplier, or Consultant, or First Tier Subcontractor, where applicable, to adhere to any of the requirements of the SB Program shall constitute a material breach of the Contract or Agreement and may result in BART terminating the Contract or Agreement or imposing appropriate sanctions. Among other things, BART may withhold payments or portions of payments to the Contractor, Supplier, or Consultant or undertake other enforcement measures due to the failure of the Contractor, Supplier, or Consultant or where applicable, the First Tier Subcontractors, to comply with the SB participation requirements. Such payments withheld will be released once the Contractor, Supplier, or Consultant or its First Tier Subcontractors, conform with the SB participation requirements.

APPENDIX MAY BE SUBJECT TO REVISION, SUBSTITUTION, DELETION OR ADDITION BY THE OFFICE OF CIVIL RIGHTS CONSISTENT WITH THE TERMS OF THE PROGRAM WITHOUT REQUIRING BOARD APPROVAL OF THE REVISION OR CHANGES TO THE PROGRAM.

APPENDIX: VERIFICATION OF THE LOCAL STATUS OF SMALL BUSINESSES

Verification is the process by which all firms seeking to participate as Local Small Businesses (LSBs) are determined to have met the eligibility requirements to participate as LSBs on Measure RR contracts. This appendix provides guidance for verifying firms as LSBs.

1. Declaration of Eligibility for Local Small Business Preference

DGS certified Small Businesses bidding on a BART contract must declare their Small Business eligibility including DGS certification number in the Declaration of Eligibility for Local Small Business Preference. On Measure RR funded contracts, the Declaration of Eligibility for Local Small Business Preference will also include a Local status declaration, including the address of the principal place of business.

2. Verifying information on the California Department of General Services Website

Upon receiving a Declaration of Eligibility for Local Small Business Preference or Local Verification Request form, OCR will verify whether the address and city listed on the DGS Small Business database is located within the three Measure RR counties. If not, the request is denied and the firm is not considered to be Local for BART. The firm may re-request verification of local status if its address has changed on the DGS website to one of the Measure RR counties.

3. Verifying Local Status of a Small Business

After verifying the location listed on the DGS website, OCR will request that the Small

Business owner(s) provide documentation to demonstrate that the business qualifies as

Local:

- A copy of their business license in the city where their business is based (or county if in an unincorporated area);
- A copy of a real estate property tax assessment or lease in the name of the firm or owner;
- A copy of the firm's (or owner's, if applicable) most recent federal tax return

These documents must be provided and examined prior to the award of the contract to gain the Local Small Business preference. If any of the documents show an address other than the one in the DGS database, it is grounds for rejection of local status, although the business owner may be given an opportunity to explain.

In some cases, additional information may be considered, such as, the location where the firm's owner(s) and CEO work on a regular basis, where the headquarters facility is located, where employees in quality and quantity report regularly to work, where the firm's primary operations take place, and where resources such as major equipment or supplies are kept.

The District expects all SBs seeking Local status to cooperate fully with requests for information relevant to the verification process and other requests for information. Failure or refusal to provide such information is cause for denial or removal of status as Local to BART (Local Small Business).

4. Declaration of Eligibility for Local Small Business Subcontractors

On contracts with a SB Preference for Bidders meeting a Local SB Subcontractor Participation Goal, any Bidder wishing to meet the Goal must declare Local SB

subcontractors on the Designation of Subcontractors, M/WBE, and SB Participation Form. After the bids are submitted, OCR will confirm that the address listed in the DGS database for each designated Local SB Subcontractor is Local and will ask any Bidder appearing to meet to Local SB Subcontractor Participation Goal to gather and submit Local status documentation for each of their Local SB Subcontractors including a Local Verification Request form and the three items listed in paragraph #3. OCR will evaluate the documentation to verify Local status of each SB Subcontractor.

5. Already Verified Local SBs

Once a SB has been verified as Local they will be added to a database maintained by BART. A Small Business bidder previously verified as Local by BART will still need to submit a Declaration of Eligibility for Local Small Business Preference as part of its bid. But its Local status does not need to be verified as described in paragraph #3.

6. Requesting Verification of Local Status Outside of the Bid Process

A DGS certified Small Business may request that OCR verify their Local status outside of any contract bid process. This can be done by completing a Local Verification Request form available on the OCR website. OCR staff will follow the steps in Paragraphs #2 and #3 to verify the Local status of the SB.

7. List of Verified Local Firms

OCR will provide notification to the firm that it has been verified as Local and will add it to the list of verified LSB or Local DVBE firms. This list is a supplement to the DGS list of certified SBs and potential LSBs but is not meant to replace it for outreach purposes. The list of currently verified LSBs will be made available on the BART website. If an SB or DVBE is removed from the DGS website, they are effectively

removed from BART's LSB list as well.

- OCR will use the industry codes – North American Industry Classification System (NAICS) – listed on the DGS website for the firm and add them to the list of verified LSBs. The assignment of a NAICS code is only for informational purposes to assist potential Bidders in identifying LSBs capable of performing work to be subcontracted.

8. Possible Site Visits

From time to time the District may request additional information or conduct site visits to ensure that a SB verified as Local remains eligible for Local status. Failure to timely cooperate or comply with a request for a site visit is a ground for denial or removal of status as a BART LSB.

9. Renewal of Local Status

Each year on or near the anniversary of the SB's verification as Local, OCR will ask the Local Small Business to complete a Declaration of No Change in Address, in order to keep its Local Small Business status current. If an SB has changed address but still remains within Alameda, Contra Costa, or San Francisco Counties, it must submit a lease, utility bill, or property tax assessment as verification of its new address as Local. If a Local SB moves outside of Alameda, Contra Costa, and San Francisco Counties it loses its Local status with BART. Every three years in order to renew its Local status, all verified Local SBs must re-submit the documentation listed in paragraph #3.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Robert M. Powers</i> 12 April 2017		GENERAL MANAGER ACTION REQ'D: Board Approval and Authorization		
DATE: 3/27/2017		BOARD INITIATED ITEM: No.		
Originator/Prepared by: Patrice McElroy Dept: Human Resources Administration	General Counsel <i>[Signature]</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary	BARC
Signature/Date: <i>[Signature]</i> 4/13/17	4/24/17 []	4/13/17 []	[]	<i>Powers</i> 12 April 2017 []

EMPLOYEE RECRUITMENT AND RELOCATION FOR THE ASSISTANT GENERAL MANAGER, PLANNING DEVELOPMENT & CONSTRUCTION

PURPOSE:

To obtain Board authorization for a national recruitment and relocation agreement to assist the District with filling the Assistant General Manager, Planning, Development and Construction position.

DISCUSSION:

On March 11, 1993, the Board adopted Resolution 4487, requiring Board approval prior to any recruiting activity to employ a person who is not a current District employee with an annual salary of \$50,000 or more. The resolution also states that the District should confine its recruiting to the State of California, consistent with provisions of the law, and that no relocation or moving expenses would be offered to new employees without prior Board approval.

The Assistant General Manager, Planning, Development & Construction is a senior management position that requires specialized skills derived from unique managerial/technical experience and education, which is critical to the progress of the District's planning, development and construction area. Specifically, the Assistant General Manager, Planning, Development and Construction is responsible for overseeing multiple system development projects, including Station Modernization, Transit-Oriented Development, and Train Control Modernization Program for the District.

The expertise of a recruiting firm that has a deep familiarity with transportation recruiting

EMPLOYEE RECRUITMENT AND RELOCATION FOR THE ASSISTANT GENERAL MANAGER, PLANNING
DEVELOPMENT & CONSTRUCTION

sources and prospects will constitute a resource beyond that which is available internally. Likewise, the ability to offer relocation assistance in the event that one or more successful candidates are not from the immediate area will enhance the District's competitive posture in this search.

By adopting this motion, the Board will authorize staff to use an executive search firm for the recruitment. The objective in using a search firm is to increase the candidate pool and identify highly qualified applicants.

Staff's intent is to enter into a search agreement for the position. Proposals will be solicited from firms that have: 1) expertise in transit and/or public sector recruitment for management positions with a focus on transportation as well as public sector expertise; 2) an ability to provide timely customized searches on a national scale; 3) acceptable business references; 4) the ability to meet the terms of agreement; and 5) price and fee structure. Interested firms will be required to provide a search plan summary document outlining search tasks, a proposed fee structure and estimated time of completion.

The Board's action will allow for executing a relocation agreement within the parameters of current District practice as provided in Management Procedure 70. This procedure sets a maximum reimbursement for relocation at \$18,000 and it does not allow for reimbursement for loss on sale of residence.

FISCAL IMPACT:

The costs, including search firm fees and any subsequent relocation agreement, will come from the FY'17 Operating Budget of the Planning, Development and Construction Department.

ALTERNATIVES:

Fill the position using in-house District recruitment resources.

RECOMMENDATION:

Adopt the following motion:

MOTION:

That the General Manager or her designee is authorized, in conformance with established District procedures governing the procurement of professional services, to obtain executive search services to identify suitable candidates both inside and outside of California for the Assistant General Manager, Planning, Development and Construction position. In addition, the General Manager is authorized to enter into a relocation agreement, if necessary, in an amount not to exceed \$18,000 for the position, in accordance with Management Procedure Number 70, New Employee Relocation Expense Reimbursement.